Canada, The Pacific

& Global Trade

Edited

by

Murray G. Smith

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Canada, the Pacific and Global Trade

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edited by
Murray G. Smith

Proceedings of a Conference
held in Vancouver
June 28-29, 1989

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Foreword

Recent proposals for Pacific economic cooperation are widely perceived as motivated by desires for a new trade bloc, perhaps linked in some way to the Canada-U.S. Free Trade Agreement, and intended to counter fears of a "fortress Europe" after 1992. Instead, however, the current focus of Pacific economic cooperation is directed toward promoting progress in the Uruguay Round of GATT negotiations. In light of common concerns about unilateral trade actions by the United States and the European Community, strengthening the multilateral trading system is a key priority shared by Canada and other Pacific economies.

This was the main conclusion emerging from an Institute conference entitled "Canada, the Pacific and the Uruguay Round", held in Vancouver June 28-29, 1989, in conjunction with the third trade Policy Forum of the Pacific Economic Cooperation Conference (PECC). Addressing both the Institute conference and the PECC Forum, the Honourable John Crosbie, Minister of International Trade, stated that "the answer to current trans-Pacific problems lies in multilateral and regional co-operation—not bilateral confrontation" and expressed support for a new Pacific ministerial forum along the lines proposed by Prime Minister Hawke of Australia. Crosbie affirmed the strategic linkage of the Canada-U.S. Free Trade Agreement to the GATT, expressed Canada's commitment to the multilateral trading system and summarized Canada's proposal (appended as Annex I in this volume) to negotiate GATT rules governing subsidies and countervailing duties in the Uruguay Round. Charles Carlisle, Deputy Director General of GATT, introduced by the former Minister of International Trade, the Honourable Pat Carney, indicated that the Uruguay Round was entering the critical final stage and emphasized that success in the Round was of great importance to the Pacific region, whose economic vitality depends upon trade and open markets. As Carlisle reminds us,

the Pacific nations have been the most dynamic in the global economy in the last quarter century. Moreover, the gap between the economic performance of the east Asian economies and the rest of the world has widened substantially in the 1980s.

For many reasons—not least our trade prospects—Canada will need to devote more attention to economic relations with Asia-Pacific nations in the 1990s. During the 1980s, Canadians have been concerned about U.S. protectionism, absorbed by the drama of the Canada-U.S. Free Trade Negotiations and conscious of Canada's heavy dependence upon trade with the United States. However, since the rapid accumulation of international liabilities will oblige the U.S. economy eventually to curtail its large merchandise trade deficit, both Canada and the United States will need to look to offshore markets for export growth in the 1990s. At the same time, Canada shares with other Asia-Pacific economies the concern that precipitous unilateral trade actions may be taken by the United States out of sheer impatience with the slow pace and irregular pattern of adjustment in trade imbalances. Based on the experience of the Cairns group of agricultural exporting nations, Canada looks to other Asia-Pacific economies to support common interests in an open multilateral trading system.

This volume reports the proceedings of the Institute conference, which examines Canada's stake in expanding economic ties across the Pacific. Germain Denis, who is directing Canada's negotiating team in the Uruguay Round, provides an overview of key negotiating issues of interest to Canada and the Pacific economies. The Honourable John Jansen, B.C. Minister of International Business and Immigration, and other private and public sector leaders present perspectives on Canada's priorities for negotiating improved market access in the GATT talks. Selected negotiating issues in the Uruguay Round—trade in services, agricultural trade rules, and trade laws—are explored from a Canadian perspective and from the perspective of Pacific economies.

Murray Smith and his colleagues in the International Economics Program organized the Institute conference, working in collaboration with H.E. English, (Coordinator of the Trade Policy Forum and a Research Associate of the Institute), and Lorne Brownsey, based in the Victoria office of the Institute, who organized the companion meeting of the PECC Trade Policy Forum.

A Pacific ministerial meeting hosted by Australia is now planned for late in 1989 as the first step in realizing the so-called "Hawke initiative". The analysis of Pacific interests and key issues in the Uruguay Round at the Vancouver meetings can thus contribute to the development of common Pacific perspectives on outstanding issues, both at that ministerial meeting and during the critical final stages in the GATT negotiations. The Pacific economies increasingly are taking a markedly more active role in shaping the evolution of the global trading system into the 21st century; Canada will have to move smartly to play its full part. This volume sets out some of the issues demanding attention.

Rod Dobell
President
October, 1989

Avant-propos

Nombreux sont ceux qui pensent que les propositions récentes relatives à la coopération économique entre les pays du Pacifique sont motivées par le désir de créer un nouveau bloc commercial, peut-être rattaché d'une certaine manière à l'Accord de libre-échange Canada/États-Unis, et dont le but serait de répondre à la menace que constituera la "forteresse européenne" après 1992. À l'heure actuelle toutefois, les pourparlers relatifs à la coopération économique dans le Pacifique ont plutôt tendance à porter sur la promotion des progrès que les négociateurs de l'Uruguay Round doivent accomplir dans le cadre du GATT. Étant donné les préoccupations communes relativement à des actions commerciales unilatérales éventuelles de la part des États-Unis et de la communauté européenne, la priorité majeure du Canada et des autres pays du Pacifique est de renforcer le système commercial multilatéral.

C'est là la principale conclusion à laquelle est arrivé un congrès de l'Institut intitulé "Le Canada, le Pacifique et l'Uruguay Round", qui s'est tenu à Vancouver les 28 et 29 juin 1989, conjointement avec le troisième forum sur les politiques commerciales, organisé dans le cadre du congrès sur la coopération économique dans le Pacifique (en anglais, PECC, Pacific Economic Cooperation Conference). Dans son discours à l'adresse des délégués du congrès de l'Institut et de ceux du Forum du PECC, l'honorable John Crosbie, ministre du Commerce international, a déclaré que "c'est la coopération multilatérale et régionale, et non pas la confrontation bilatérale, qui permettra de résoudre les problèmes trans-pacifiques actuels". Il a donné son appui pour la tenue d'un nouveau forum ministériel du Pacifique, tel que proposé par le Premier ministre d'Australie, M. Hawke. M. Crosbie a confirmé qu'il existait un lien stratégique entre l'Accord de libre-échange Canada/États-Unis et le GATT, il a réaffirmé l'engagement du Canada envers le système commercial multilatéral et il a résumé la proposition du Canada (ci-jointe, annexe 1) pour

négocier les règlements du GATT relatifs aux subventions et aux tarifs compensatoires dans le cadre de l'Uruguay Round. Charles Carlisle, sous-directeur général du GATT, présenté par l'ancien ministre du Commerce international, l'honorable Pat Carney, a fait remarquer que l'Uruguay Round entrait dans sa phase finale critique et a souligné que la réussite des négociations était de la plus haute importance pour la région du Pacifique, dont la vitalité économique dépend du commerce et de l'ouverture des marchés. M. Carlisle a rappelé que les pays du Pacifique se sont avéré être les plus dynamiques dans l'économie globale des vingt-cinq dernières années. Il a ajouté que le décalage qui existait entre le rendement économique des pays de l'Asie de l'Est et celui du reste du monde s'était considérablement accentué au cours des années 80.

Pour de nombreuses raisons, entre autres notamment nos espoirs commerciaux, le Canada devra s'intéresser davantage aux relations économiques avec les pays de l'Asie du Pacifique dans les années 90. Au cours des années 80, les Canadiens se sont surtout inquiétés du protectionnisme américain, des péripéties auxquelles ont donné lieu les négociations en vue de l'Accord de libre-échange Canada/États-Unis et du fait que leur pays dépendait fortement du commerce avec les États-Unis. Toutefois, puisque l'accumulation rapide des dettes internationales va obliger les États-Unis à restreindre leur fort déficit en matière de balance commerciale, c'est vers les marchés d'outre-mer que les États-Unis et le Canada devront se tourner pour augmenter leurs exportations pendant la prochaine décennie. Mais le Canada craint également, de même que d'autres pays de l'Asie du Pacifique, que les États-Unis n'en viennent à prendre des mesures unilatérales précipitées, dans leur impatience devant la lenteur et l'irrégularité du processus d'ajustement des déséquilibres commerciaux. Fort de l'expérience du groupe Cairns des pays exportateurs de produits agricoles, le Canada espère que d'autres économies de l'Asie du Pacifique oeuvreront avec lui à la défense de leurs intérêts communs dans un système de commerce multilatéral ouvert.

Les comptes rendus du congrès de l'Institut ont été rassemblés dans cet ouvrage, où se trouve examiné l'enjeu du Canada relativement à l'expansion de ses liens économiques avec l'autre côté du Pacifique. Germain Denis, qui dirige l'équipe de négociation canadienne à l'Uruguay Round, y présente une vue d'ensemble des questions économiques principales qui touchent le Canada et les pays du Pacifique. L'honorable John Jansen, ministre du Commerce international et de l'Immigration de la Colombie-Britannique, ainsi que d'autres personnalités des secteurs privé et public, y exposent les grandes lignes de ce que devraient être les priorités du Canada dans ses négociations dans le cadre du GATT en vue d'améliorer son accès aux marchés extérieurs. Certaines des questions débattues à l'Uruguay Round (le commerce des services, les règlements du commerce des produits agricoles et les lois commerciales) sont examinées du point de vue du Canada et du point de vue des pays du Pacifique.

Murray Smith et ses collègues du programme sur l'économie internationale ont organisé ce congrès de l'Institut, en collaboration avec H.E. English (ccordonnateur du forum sur les politiques commerciales et chercheur principal à l'Institut), et Lorne Brownsey, du bureau de l'Institut de Victoria, qui organisait la réunion parallèle du forum sur les politiques commerciales du PECC.

Une réunion ministérielle du Pacifique, organisée par l'Australie, est maintenant prévue pour la fin de l'année 1989. Ce sera le premier pas vers la réalisation de ce que l'on a baptisé "l'initiative Hawke". L'analyse des intérêts des pays du Pacifique et celle des questions les plus importantes de l'Uruguay Round, à l'occasion des réunions de Vancouver, peuvent donc contribuer à la définition de perspectives communes aux pays du Pacifique relativement aux problèmes à régler, à la fois lors de la réunion ministérielle et au cours de la phase finale critique des négociations du GATT. Les économies des pays du Pacifique prennent une part de plus en plus active dans le façonnement de l'évolution d'un système commercial international qui doit préparer son entrée dans le 21ème siècle. Le Canada devra bien jouer s'il veut y tenir un rôle à part entière. Cet ouvrage présente quelques-unes des questions relatives à cet objectif et qui devraient retenir notre attention.

Rod Dobell
Président
Octobre 1989

Biographical Sketches of Authors

G. Firman Bentley

Firman Bentley is President of Polysar Basic Petrochemicals and is also Senior Vice-President of Nova Corporation of Alberta. He has occupied a number of senior positions in Polysar since 1964 both in Canada and abroad, including during the 1970s, General Manager of Polysar Belgium and Vice-President responsible for Polysar's international rubber operation. Mr. Bentley is chairman of the Sectoral Advisory Group on International Trade (SAGIT) on Energy, Chemicals and Petrochemicals and is also a member of the federal government's International Trade Advisory Committee (ITAC) for the multilateral trade negotiations. As well, Mr. Bentley is vice chairman of the Board of the Canadian Chemical Producers' Association, and a director of the Ontario Waste Management Corporation.

Charles Carlisle

Charles Carlisle has been deputy Director-General of the General Agreement on Tariffs and Trade (he GATT) in Geneva, since January 1987. Prior to that, he was appointed a Special Negotiator with the personal rank of Ambassador in the Department of State and, subsequently, he served with the United States Trade Representative in Washington as Ambassador and Chief Textile Negotiator.

Earlier in his career Mr. Carlisle was a career Foreign Service Officer serving both in Washington and at posts abroad, a Vice President of St. Joe Minerals Corporation in New

York and President of the American Fibre Manufacturers Association in Washington. He holds a bachelor's degree from the University of Cincinnati and a master's degree from Harvard University.

The Honourable John Crosbie

The Honourable John Crosbie is the Canadian Minister for International Trade. He has played distinguished roles in Canada's Parliament and the Progressive Conservative Party since 1976, when he was elected to the House of Commons for the constituency of St. John's West in Newfoundland. During 1984-1986 Mr. Crosbie was Minister of Justice and Attorney General for Canada, during 1986-1988 he was Minister of Transport. Before 1976, he held a number of important Cabinet portfolios in the government of the Province of Newfoundland.

As Minister for International Trade, Mr. Crosbie carries responsibility for Canada's trade relations with other countries. He was in charge of the concluding stages of the negotiations, on the Canadian side, for the Canada-United States Free Trade Agreement, and is now responsible for the implementation of the Agreement, as well as for Canadian participation in the Uruguay Round of multilateral trade negotiations in GATT.

Germain A. Denis

Germain Denis is Assistant Deputy Minister in charge of the Office for Multilateral Trade Negotiations. He was Assistant Chief Negotiator on market access issues in the Trade Negotiations Office for the Canada/USA Free Trade Negotiations.

Mr. Denis served in Geneva on Canada's delegation to the Tokyo Round of multilateral negotiations. Between 1979 and 1982, he worked in the Ministry of State for Economic Development and on industrial and regional development policy in the Department of Regional Industrial Expansion. Since 1983, he has been with the Department of External Affairs where he was charged with the automotive trade negotiations with Japan between 1983-85.

Christopher Findlay

Christopher Findlay is Senior Lecturer in the Department of Economics at the University of Adelaide and Associate of the Australia-Japan Research Centre. He completed a Ph.D at the ANU in 1981 on the topic of the regulation of international air transport. His research interests still include that topic as well as the developments in the demand for

air transport, especially from the growth in tourism but also in the freight market, changes in the supply side, especially the shifts in competitiveness of various suppliers over time and the role of vertical linkages between various points in the transport network, and the effects of these changes on the regulatory system. His is presently working with Peter Forsyth on a statistical study of the costs and productivity of international airlines and on the issues involved in foreign investment in the tourism sector in Australia. In this work, he is taking a special interest in the issues associated with Japanese tourism and investment in Australia.

Joseph Michael Finger

Michael Finger is Principal Economist for International Trade at the World Bank in Washington, D.C., where he is responsible for global trade issues, including the participation of developing countries in the GATT and the Uruguay Round of multilateral trade negotiations. He is a widely recognized authority on international trade policy, having served for eight years with the World Bank, six years with the U.S. Treasury dealing with trade policy issues and three years with the UNCTAD Secretariat in Geneva. Mr. Finger is the author of many books and articles on the economies of trade policy, trade law and trade policy institutions.

David Gamble

David Gamble is Assistant Secretary for Economic and Trade Relations with the Ministry of External Relations and Trade, Government of New Zealand. His responsibilities include co-ordinating New Zealand's participation in the Uruguay Round of multilateral negotiations. Previously, he was involved in the negotiation of the extension of the Australia-New Zealand Closer Economic Relationship and participated in the work of the Cairns group of agricultural exporting countries.

Klaus Goeckmann

Klaus Goeckmann received an M.A. in Engineering (Metallurgy) in 1969, and a Ph.D. in Engineering (Metallurgy) in 1974, both from the University of Aachen. From 1975 to 1987 he was with Metallgeseleschaft AG in Frankfurt. He joined Cominco Ltd. in Vancouver in 1987 as Vice President, Marketing and Sales. He is a director of Cominco (U.K.) Ltd. and of Mitsubishi Cominco Smelting Company Limited. He is a member of the BIAC Raw Materials Sub Committee, ILZRO and the Mining Association of Canada.

Brian Hindley

Brian Hindley has been Counsellor for Studies at the Trade Policy Research Centre in London, England, since 1977; and he is a Senior Lecturer in Economics at the London School of Economics and Political Science, University of London, where he has taught since 1967. In 1985-86, Dr. Hindley was a Consultant to the World Bank, Washington. He has also been a Visiting Professor at Queen's University in Canada (1971), at the Institute for International Economic Studies, University of Stockholm (1973-74), at the Hebrew University of Jerusalem (1977) and at the University of Leuven in Belgium (various periods since 1978). Dr. Hindley specializes in industrial organization and international trade. He is the author of numerous books and articles on trade policy and related issues, including "Service Sector Protection: Considerations on Developing Countries" in *The World Bank Economic Review*, May 1988.

The Honourable John Jansen

The Honourable John Jansen is Minister of Business and Immigration in the Government of British Columbia. He has served in the British Columbia Legislature as member for Chilliwack since 1984, having previously been Mayor of Chilliwack. Mr. Jansen has also served as Parliamentary Secretary to the Minister of State for the Mainland/Southwest Region, and he is a member of the Select Standing Committee on Labour, Justice and Intergovernmental Relations.

Peter David Lee

David Lee is a Senior Coordinator and negotiator in the Office of Multilateral Trade negotiations, Department of External Affairs in Ottawa. His previous service with the Department of External Affairs included Minister and Deputy Permanent Representative at Canada's Mission to the United Nations in New York (1982-86); Chairman, Task Force on Trade in Services (1981-82); Executive Secretary, 1981 Summit Conference (1980-81); Minister Counsellor and Deputy Head of the Canadian Mission to the European Community, Brussels, (1975-79); and tours of duty in Tokyo, Teheran, Geneva, Madrid and Copenhagen. In 1969-72 Mr. Lee was Deputy Director of the Commercial Policy Division in External Affairs.

William G. Miner

Bill Miner is Senior Research Associate (Agriculture) with the International Economics Program at the Institute for Research on Public Policy. Prior to joining the Institute, he had served as a special advisor on trade negotiations with the federal Department of Agriculture and coordinator of the Federal Grains Group. He is an authority on international agricultural and trade matters and has participated in international meetings and negotiations in GATT. Earlier in his career, he was a member of Canada's trade commissioner service. He later joined the federal Department of Industry, Trade and Commerce as Director of the Commodity Trade Policy Branch. Mr. Miner is a member of the Board of Directors of the International Policy Council on Agriculture and Trade and is coeditor of *World Agricultural Trade: Building a Consensus.*

Janet Nuzum

Janet Nuzum is a lawyer on the staff of the Subcommittee on International Trade, which is part of the Ways and Means Committee of the U.S. House of Representatives. She joined the Subcommittee staff in 1983 and has been involved in the drafting of the Trade and Tariff Act of 1984 and the Omnibus Trade and Competitiveness Act of 1988. Previously she was with the Washington law firm of Arnold and Porter. She is a graduate of the Georgetown Law Center.

Lorne Seitz

Lorne Seitz brings experience and knowledge of international business, developed over the previous 17 years in various roles with the Canadian Chamber of Commerce to the position of Deputy Minister of International Business and Immigration. In his role as Senior Vice President of the Canadian Chamber of Commerce from 1983-1988, Mr. Seitz was responsible for all international policies, programs and activities of the Chamber, including the management of several autonomous business organizations with an international mandate. He has been particularly active in Pacific Rim business relations and has travelled extensively in the Asia-Pacific region.

Prior to 1983, he was General Manager of the Chamber's International Division and before that served with the Canadian Chamber of Commerce in the Prairie region, Atlantic Canada and in the Chamber's Ottawa headquarters.

A graduate of the University of Saskatchewan, Mr. Seitz completed his undergraduate degree in economics and political science in 1968. He went on to complete course work towards a Master's degree in international relations.

Murray G. Smith

Murray Smith joined the Institute for Research on Public Policy in June 1987 as Director of the International Economics Program. Previously, he was with the C.D. Howe Institute where he served as a Senior Policy Analyst and Canadian Research Director for the Canadian-American Committee. During the Tokyo Round of multilateral negotiations, he was Director of International Economic Relations in the British Columbia government and represented the province in federal-provincial and international meetings and provided support for Ministerial and First Ministers' meetings.

Murray was educated in economics at the Universities of British Columbia and Michigan. He is author or coauthor of several books—including *Taking the Initiative: Canada's Trade Options in a Turbulent World*, *Bridging the Gap: Trade Laws in the Canadian-U.S. Negotiations* and *Global Imbalances and U.S. Policy Responses: A Canadian Perspective*; and several articles on international economic issues. He is also coeditor of *Assessing the Canada-U.S. Free Trade Agreement* and *The Canada-U.S. Free Trade Agreement: The Global Impact*.

Editor's Introduction

Canada and The Pacific in The Uruguay Round and the Multilateral Trading System

Murray G. Smith
Institute for Research on Public Policy

Introduction

Canada is a Pacific nation. This is a geographic fact, but the phrase is often repeated, as if to convince a sceptical audience. Canadians are sceptical, for as the Honourable John Crosbie, Canada's Minister of International Trade, states in his keynote address in this volume, Canadians have looked: "North for mythology, South for commerce, and East for our traditions. Rarely have we looked West beyond our shores."[1]

Canada's trans-Pacific trading partners may be equally sceptical. From afar Canadians appear almost indistinguishable from Americans, a perception that may be reinforced by the recent implementation of the Canada-U.S. Free Trade Agreement. Yet Canadians on both sides of Canada's Free Trade debate would protest vigorously that Canadian society and Canadian government policies are very different from those of our southern neighbour. It is true that much of Canada's trade has been with the United States, particularly during the 1980s. As with Canada, however, the United States has been a very significant, and sometimes difficult, trading partner for many of the Pacific countries in the 1980s.

The Pacific Agenda

The concept of economic cooperation among the Pacific countries has had a long gestation. Nongovernmental organizations that have played a role in dialogue among Pacific countries include: the Pacific Basin Economic Council (PBEC), drawing together private

sector business groups, was founded in 1967; the Pacific Forum for Trade and Development (PAFTAD), was founded in 1968; the Pacific Economic Cooperation Conference (PECC) involves government representatives, academics, and business, and was started in 1980. These organizations have contributed to continuing dialogue at several levels among the Pacific countries. However, no formal intergovernmental organization among the Pacific nations has yet emerged.

Nevertheless, the concept of closer cooperation among countries of the region has been a continuing subject of discussion. Early policy proposals ranged from creation of a Pacific Free Trade Area to development of a stronger consultative framework among governments of the region. Indeed, the first meeting of PAFTAD in 1968 discussed Professor Kiyoshi Kojima's proposal for a Pacific Free Trade Area. The efforts of Sir John Crawford and Saburo Okita in promoting an intergovernmental dialogue were instrumental in the creation of PECC which is tripartite, although government officials participate in an unofficial capacity. Proposals for stronger institutional links or Pacific-based policy initiatives have faced a number of obstacles. First was the sheer diversity of Pacific societies, economies, and governments in the region. Second, there were political obstacles associated with the People's Republic of China, Hong Kong and Taiwan as well as security associated with the socialist economies of the region. Third, historical factors are the basis for a degree of distrust of Japan and the United States among some of the smaller economies in the region.

In light of earlier hesitations, it is remarkable that the proposal for a Pacific Ministerial conference made in early 1989 by Australia's Prime Minister Hawke in Seoul, Korea, has gathered so much momentum. Building on earlier proposals by former Prime Minister Nakasone of Japan, and Secretary of State George Schultz and Senator Bradley of the United States, Hawke cited three factors in his speech as providing the immediate impetus for greater Pacific economic cooperation.

> Serious cracks are appearing in the international trading system which have major implications for the future health of both our region and the world economy. First, you will all be aware of the bilateral trade pressures associated with the significant trade imbalances between a number of regional countries and the United States. Second, there is a trend towards the formation of bilateral or regional trading arrangements which run the risk of undermining a truly multilateral trading system. Third, there are fundamental tensions within the GATT framework of multilateral trade, of which the recent Montreal deadlock is but the latest manifestation.[2]

Concerns about the prospects for the Uruguay Round have moderated somewhat since Hawke's proposal was first put forward, because the meeting of the Trade Negotiating Committee in Geneva in April 1989 was able to resolve the impasse on some key issues that were unresolved at the Montreal Ministerial meeting in December 1988. Moreover, the concerns about unilateral actions by the United States have abated somewhat, since the U.S. administration designated only three countries—Japan, Brazil, and India—under the Super 301 legislative provision in the Omnibus Trade and Competitiveness Act of 1988. Yet, the success of the Uruguay Round is by no means assured and the outcome of the Uruguay Round could determine whether the United

States Administration takes it upon itself to actually impose trade penalties on those countries designated under Section 301.

Echoing Senator Bradley's call for a coalition of Pacific countries to reinforce progress in the Uruguay Round, Hawke stated:

> . . . effective regional cooperation can greatly improve the chances of success of the Uruguay Round and could thereby give a vital boost to the liberalisation—and therefore the preservation—of the GATT-based trading system . . . a major priority of any regional effort would be the strengthening of the GATT system.[3]

The concern about the tensions which could be unleashed by unilateral trade actions by the United States may have prompted Prime Minister Hawke originally to envisage only the Western Pacific countries as members of the proposed grouping. At the outset, neither the United States nor Canada were invited by Hawke to participate in the proposed Pacific Ministerial meeting, although Australian officials visited Washington, Ottawa, Hong Kong, and Beijing to discuss the proposed meeting.

Canada signalled early interest in participation in the intergovernmental Pacific dialogue. In New Zealand in March 1989, Canada's Minister for International Trade stated publicly that Canada is taking an "active role in the examination and creation of new linkages in Asia Pacific."[4] While stressing that the Uruguay Round of GATT was a key priority, Crosbie welcomed the development of a new mechanism for Pacific economic cooperation. At the conference in Vancouver in June 1989, Crosbie again affirmed his support for a Pacific Ministerial forum along the lines proposed by Australian Prime Minister Hawke.

Simultaneously with the Vancouver meeting, the U.S. Secretary of State James Baker made a major policy speech to the Asia Society in New York outlining the new Administration's views on a new mechanism for multilateral cooperation among the nations of the Pacific Rim. He said:

> First, any mechanism should encompass a wide array of issues, exchange and the protection of the Pacific region's natural resources . . . . Second, any Pacific-wide institution must be an inclusive entity that expands trade and investment. It must help, not hinder, already existing efforts, such as the Uruguay Round of GATT, the OECD, or a regional group, such as ASEAN. It should be based on a commitment by market economies to facilitate the free flow of goods, services, capital, technology and ideas. Third, a pan-Pacific entity should recognize the diversity of social and economic systems and differing levels of development in the region."[5]

Subsequently Baker visited Australia in advance of the "ASEAN dialogue" held in Brunei in July 1989, attended by the ASEAN countries, the U.S., the European Community, Japan, Australia, Canada and New Zealand. At this meeting a consensus began to develop among the Pacific nations to proceed with a ministerial meeting in Canberra in November 1989 to discuss economic and trade issues of common concern. However, the European Community representative at the Brunei meeting expressed concern that the Community would not be invited and expressed concern about balkanization of the trading system.

Canada and the Pacific in the Global Economy

Several factors will influence the international environment within which the Canadian economy and the other Pacific economies will be operating in the 1990s and beyond. One set of factors involves longer-term shifts in the currents of global trade and economic activity, including greater rivalry among the industrial countries, the continued emergence of the newly industrialized economies—most of whom are located in the Western Pacific, and the policy response of the industrial countries to competition from the NIES. A second set of factors involves the evolution of trade imbalances and related developments in exchange rates which influence the tidal flows of global trade in goods and services and which, in turn, will influence trans-Pacific and intra-regional trade flows during the 1990s and into the 21st century. The short-term evolution of these trade imbalances, especially in the United States, could have important implications for trade policies. Thirdly, the outcome of the Uruguay Round could extend and strengthen the set of GATT rules which govern international trade in goods and services.

Currents in Global Commerce

In recent decades, the world has become much more interdependent and the balance of economic power has shifted. Europe and Japan have reorganized their economies and emerged as economic superpowers. A number of Newly Industrialized Economies (NIEs) have become significant players in the global economy.

Economic interdependence has increased for some reasons which are unrelated to economic policy. A long period of relative peace and security has fostered the expansion of global commerce. An ongoing revolution in the technology of transportation and communications has reduced, and continues to reduce, economic impediments to international trade in goods and services. And the continuing evolution of industrial structure, from agriculture and primary industries to manufacturing, and to services, has led to greater focus on information flows and intermediation and a corresponding evolution toward more flexible and dispersed production structures, coordinated on a global basis.

Economic policy cooperation among the industrial countries has contributed to increased interdependence as well. The reduction of tariffs and the liberalization of non-tariff barriers, which has occurred under the auspices of the GATT and through regional trading arrangements, has made a significant contribution to the expansion of trade and economic growth in the last 40 years. In addition, and despite periodic stresses, strains and occasional crises in the exchange rate system, the International Monetary Fund (IMF) and other international financial institutions have facilitated the maintenance of an open trade and payments system.

Over the past two or three decades there has been a dramatic increase in global production and competition. Three factors account for much of this increase. First, competition has increased among the advanced high-income countries and there is

growing global rivalry among multinational corporations. The most dramatic development is the emergence of Japan as the second largest national economy in the world. In the 1950s Japan accounted for about 2 per cent of GDP of the industrialized countries as a group. By 1985, Japan's share was 16 per cent. The integration of the European market through the creation of the European Community (EC) and of the European Free Trade Association (EFTA) and the subsequent linking of these markets through the EFTA-EC bilateral agreements yielded a single market of 350 million people. Large domestic markets and the higher per capita incomes achieved both in Europe and in Japan have enabled these economies to offer the advantages of economies of scale and innovation to their domestic firms; and European and Japanese industry now compete effectively against U.S. multinational enterprises in the development of new products and new technologies. The growing interpenetration of trade and investment by multinational corporations poses particular challenges for Canada which has a heavy preponderance of U.S. subsidiaries.

Second, high rates of economic growth among the group of NIEs have also altered relative competitive positions in international trade. Hong Kong and Singapore have enjoyed robust economic growth based on outward looking trade strategies with domestic policies that have shifted from an emphasis on import substitution toward a policy of export orientation. South Korea and Taiwan have become powerful competitors in the basic heavy manufacturing industries, as well as in a wide range of manufacturing by labour-intensive industries. The NIEs are a diverse group, with differences in their domestic policies, in their social and economic structures, and in their external trade and payments regimes, but several of them have emerged as significant international competitors in industries such as automotive production, steel, and shipbuilding, which were traditionally the preserve of the industrialized countries.

Third, a group of countries consisting of developing economies with large populations is shifting from a heavy agricultural orientation toward more industrial production and trade. Economies such as Thailand, the Philippines, Malaysia, Mexico and potentially the People's Republic of China are to varying degrees following the path trod by Hong Kong and Taiwan, by pursuing more outward-looking policies and expanding their production and exports in labour-intensive light-manufactured consumer products.

The dynamism of the Japanese and East Asian economies has provoked major, largely defensive, responses in Europe which is currently occupied with the "completion" of its internal market by 1992. Pacific governments are concerned about the extent of discrimination by the Community countries especially against East Asian manufactured exports. Although the Community's tariffs are not out of line with the major economic powers of the Pacific, agricultural policies and non-tariff barriers relating to textile products and consumer durables are notorious, and anti-dumping duties based on questionable economic measurement are common. As Hindley's paper in this volume observes, the threat of imposition of anti-dumping duties is often used by the European Community to induce Pacific countries to enter into voluntary export restraints.

Canada and the United States also use the anti-dumping and countervailing duty laws against exports of Pacific countries and have sought voluntary export restraint

arrangements in sectors such as automobiles. Canada and the United States impose significant restraints on exports of textiles and apparel from developing countries under the Multifibre Arrangement (MFA). The outward looking economic policies pursued by the Pacific economies are promoting the expansion of global commerce and contributing to world economic growth, but the industrial countries have resisted the structural adjustment of domestic economies that results from trade expansion by Japan and the newly industrializing economies in the Pacific.

Shifting Trade Tides

Continuing pressures to reverse global trade imbalances will influence the stance of the major players in the Uruguay Round. The realignment of exchange rates (which has sharply reduced the value of the U.S. dollar as well as the Canadian dollar in terms of the yen and West German mark since 1985) has started the process of reversing global trade imbalances, but will not necessarily make it easier to achieve trade liberalization in the Uruguay Round. Protectionism may be waning slowly in the United States, but the legacy of protectionist attitudes is likely to continue to linger. At the same time, Japan and Europe (both with strong currencies) could become less willing to open their markets to competition from foreign agricultural producers and the manufacturing capabilities in developing countries.

Similarly the pattern of Canadian trade is affected by the exchange rate alignment among the major industrial countries. During the 1970s when the U.S. dollar was low, Canada earned all of the trade surplus required to service its international liabilities from offshore trade. During the 1980s with the strong U.S. dollar, Canada obtained all of the necessary trade surplus from trade with the United States and ran a trade deficit with the rest of the world. Although the process could be irregular, depending upon the budgetary policies of the U.S. Administration and Congress, during the 1990s the United States will be obliged by mounting foreign debt service requirements to continue to make progress in reducing its trade deficit. Thus, Canada as well as the United States will need to look to offshore markets for growing export opportunities during the 1990s. At the same time, unwinding the U.S. trade deficit will imply expanded intra-regional trade among Western Pacific nations.

Over several years, realignment of exchange rates will promote orderly adjustment in the pattern of trade in goods and services among the Pacific countries and on a global basis. However, there remains a serious policy risk that impatience in the United States with the slow and irregular pattern of adjustment of trade flows will result in protectionist policy measures which are damaging to global commerce. For example the exchange rates among the major industrial countries during 1989 could cause the improvement in the U.S. trade account to cease or even reverse in 1990—depending upon the buoyancy of consumption spending in the U.S. economy in 1990. Although further adjustment in exchange rates could facilitate further adjustment in trade flows in later years, the lack of apparent progress in reducing the U.S. trade deficit could provoke

anxiety in the United States as the twin deadlines for completion of the Uruguay Round and for the U.S. Administration to deal with Super 301 designations loom at the end of 1990.

Launching the Round

The issues in the Uruguay Round can best be understood with reference to the history of the GATT in the 1980s. In particular, conflicts between the United States and the European Community, which sought support among the developing countries, that erupted at the 1982 GATT Ministerial meeting, threatened to undermine the GATT system. Moreover, as the decade unfolded, and as protectionist pressures grew in the United States with the strong U.S. dollar, the risks that the system would unravel increased. Thus the decision to have a ministerial meeting in Punta del Este, Uruguay, in September 1986 in an effort to launch another round of multilateral GATT negotiations was not without risk.

The divisions over key issues between the United States and the European Community, which often aligned itself with many developing countries, persisted in the period prior to the Uruguay Ministerial meeting. Instead of the major players developing the draft declaration, that task fell to a number of smaller countries, the de la Paix group (which includes Canada, Sweden, Switzerland, Australia, South Korea and Hong Kong and a larger group called the G47); it was these countries that drafted the text which ultimately served to provide the basis for the Punta del Este Ministerial declaration. The role of these smaller countries was to broker and bridge the gaps between the U.S. position and the EC/developing country position on issues such as services.

Although most of those present at the Uruguay Ministerial meeting were conscious that failure to develop a joint position launching the Round could have extremely serious consequences for the world trading system, up until the final day of the meeting there was no guarantee that success would be achieved. It took the efforts of the Cairns group of countries, which includes Canada, Australia, New Zealand and nine developing countries, to force agricultural trade issues on the agenda of the Round in a manner that was satisfactory to both the United States and the European Community.

Thus, unlike the Tokyo Round where the agenda and ultimate outcome of the negotiations was determined largely by interaction among the big three—the United States, the European Community and Japan—the Uruguay Round is a much more "multilateral" negotiation. Indeed, the middle powers, particularly from the developed countries, although more recently including some of the developing countries, have played a critical role in resolving divisions among the big three and between the developed countries and the developing countries.

Objectives of the Major Blocs

A major objective of the United States is to strengthen the trade rules dealing with subsidies (in particular to limit European subsidies) and to improve the effectiveness of the application of these rules, particularly to sectors such as agriculture. As in past GATT rounds, the United States also seeks improvement in the terms of export market access, and argues that since non-tariff barriers have become more important in constraining the expansion of trade, the GATT negotiations should aim primarily at eliminating such barriers. The United States attaches a high priority to the "new issues", specifically: the reduction or elimination of barriers to trade in services; the removal of policies which affect direct investment and which indirectly distort trade flows—trade related investment measures (TRIMs)—and trade related intellectual property issues (TRIPs).

A key to the development of momentum in the multilateral talks is the interests of the other major parties. The European Community's declarations on the Uruguay Round suggest that it has only a limited interest in improvements in export market access. Rather, its most prominent export concern is to obtain more effective means of entry into Japanese markets for manufactured products amid concerns about the Japanese distribution system and the bilateral EC-Japan trade imbalance. The EC supports strengthening trade rules and their application to problems of intellectual property and counterfeit goods, as well as the principle of freer trade in services. In important respects, however, the EC is defensive about its trade policies. While the EC is prepared to negotiate about agricultural trade issues, negotiations that might change key elements of the Common Agricultural Policy (CAP) are likely to be extremely difficult. The EC also takes the view that the negotiations should aim for tariff harmonization by reducing some high tariffs, but that they should not involve across-the-board reductions. The Community is preoccupied with the effort to complete the internal market by 1992 and it remains uncertain how these internal policy developments will influence the EC negotiating position in the Uruguay Round.

Japan's objectives in the Uruguay Round are to obtain greater security of access to markets in general, and to improve access to markets for high-technology products in particular. Japan also supports efforts to achieve freer trade in services and to develop GATT rules on intellectual property measures. Japan is less willing to liberalize trade in agricultural and primary resource products, because of the political clout of that country's rural sector. Although Japan's approach to the Uruguay Round is cautious and conservative, Japan has been a consistent and constructive participant in the negotiations.

A potentially major obstacle in the Uruguay Round is the conflicting objectives of the industrial countries on the one hand, and the developing countries on the other. Developing countries want liberalized trade in import-sensitive industries, such as clothing and textiles, as well as tighter restrictions on the use of quotas or other safeguard measures in industries such as steel. Most industrial countries (with the partial exception of the EFTA nations), however, are reluctant to accede to these demands. Yet all the industrial countries, including the United States, Japan, Canada, and those in the EC and EFTA, would like the developing countries to accept more obligations under GATT rules, to participate in some reciprocal reduction of trade barriers to goods, and to

agree to new trade rules for services, investment, and intellectual property. Yet the developing countries remain attached to the GATT principle of special and differential treatment for themselves. They also resist the extension of GATT rules to trade in services, TRIMs and TRIPs.

The Negotiating Agenda

Although the launch of the Round was achieved only with difficulty, the Uruguay Round set itself an extraordinarily ambitious and complex agenda. The negotiations are seeking to resolve long standing and difficult problems in international trade, most notably distortions to agricultural trade, and the exclusion of textiles and clothing from normal GATT rules, as well as resolving the issue of safeguards which had proved to be unresolvable during the Tokyo Round. In addition to continuing and growing problems of old fashioned protectionism in industries such as textiles and steel, the trading system is beset by new conflicts associated with the U.S. mania about unfair trade. Thus subsidies, countervailing duties and other unfair "trade remedy" actions such as aggressive application of Section 301 of the U.S. Trade Act of 1974 to trade and investment issues have become contentious issues in global trade. In conjunction with these measures that are GATT-legal, there has been a proliferation of "grey-area" measures in the form of voluntary export restraints, some of which are technically outside GATT rules, which are used to impose managed trade regimes.

Beyond tackling these difficult issues, the agenda for the Uruguay Round, as noted earlier, seeks to expand the trading rules to deal with issues arising from trade in services, trade related investment measures and trade related aspects of intellectual property regimes. In the absence of progress on these issues, the United States and perhaps also the European Community are prepared to act unilaterally on these issues.

Finally, the negotiations seek to deal with some of the fundamental institutional problems in the world trading system. It is customary to refer to the GATT as one of the pillars of the Bretton Woods system of international economic organizations, but this observation is only partially true. The GATT was intended to be an interim arrangement until the formation of the International Trade Organization (ITO), but the ratification of the ITO failed in the U.S. Congress. Indeed, there is no reference in the text of the GATT to the organization of the GATT Secretariat. The institution of the GATT and the dispute settlement procedures have evolved on the basis of a consensus among the contracting parties. This Round is seeking to address some of the more fundamental issues in the trading system by developing new institutions to monitor trade policies and to strengthen the dispute settlement procedures.

Tariffs

Tariff negotiations have been at the centre of the GATT agenda in previous rounds of multilateral negotiations. During the Tokyo Round there was an extensive effort to deal with non-tariff barriers to trade, but significant tariff reductions were an important part of the overall achievement of the negotiations. During the early stages of the Uruguay Round, none of the big three expressed a significant interest in the reduction of tariffs as a means of trade liberalization. The successive Rounds of GATT negotiations have reduced tariffs on those products of greatest mutual interest to the big three. The developing countries have significant interest in obtaining further reductions of developed country tariffs, but many are reluctant to make even limited tariff concessions to open their own markets. In light of the relatively limited interest among the big three in tariff reductions, the agreement coming out of the Montreal Ministerial, which aims at tariff reductions comparable to the overall level achieved in the Tokyo Round, is a major achievement.

Nonetheless the structure of tariffs in the Japanese and European markets poses particular problem for Canada and other resource-based economies in the Pacific. During the Tokyo Round, Canada tried to obtain better access to export markets for processed resource products. Since Europe and Japan impose low or zero tariffs on primary unprocessed resource products and increase their tariffs as the degree of processing of a particular product increases, Canada faces particular barriers to the upgrading of its natural resource products. The tariff formula utilized in the Tokyo Round tended to reduce high tariffs to a greater extent than low tariffs. As a result, little progress was made in reducing the barriers to the export of upgraded resource products from Canada. Canadian priorities for the Uruguay Round are identified by Firman Bentley, Klaus Goeckmann and Lorne Seitz in this volume.

In the Uruguay Round, a group of smaller countries, known as the de la Paix group are leading discussions of a proposed method to achieve tariff reductions. Among the members of the de la Paix group are Canada, Switzerland, Sweden, Australia, New Zealand, Hungary, Singapore, Hong Kong, South Korea, Columbia, Uruguay, Pakistan and Zaire. Members of this group are exploring variations of the tariff formula used during the Tokyo Round but modified to encourage or require the elimination or substantial reductions in tariffs of less than 5 per cent. Criteria of this sort would assist greatly in reducing the barriers to exports of upgraded Canadian resource products.

The United States has expressed its strong opposition to a formula approach to tariff reductions, and supports the traditional request and offer approach used in the early days of the GATT. Under the request and offer approach negotiations are conducted on a bilateral basis. In the U.S. view this approach gives the big countries more leverage in the negotiations. At this point the prospect for liberalization of tariffs during the Tokyo Round remains uncertain. In light of the U.S. position, the negotiations might well proceed on a request and offer basis, and not a formula approach as used in the Tokyo Round.

If so, this will have important strategic implications for Canada which we will consider below. Also, Canada will have to identify carefully its priorities for obtaining

better access to offshore markets through the tariff negotiations. Specific priorities for expanding export prospects for processed resource products and selected opportunities to expand exports of secondary manufacturing goods will need to be identified and negotiated on a product by product basis with each of Canada's major trading partners. Canada will need to make common cause with developing countries, if it wishes to make progress on obtaining better access for processed resource products.

Agriculture

As a major exporter of agricultural products Canada has attached a high priority to liberalization of agricultural trade. As a member of the Cairns group, Canada seeks to restrict the proliferation of subsidies to domestic agriculture which are distorting world trade and to obtain liberalization of import barriers in the markets of the European Community, Japan and the United States. At the same time, Canada remains deeply attached to supply management marketing boards as permitted under GATT Article XI—see the comments by the Honourable John Jansen in this volume.

Agricultural trade was the most contentious of the four issues that created an impasse at the Montreal Ministerial meeting in December 1988. The report adopted by the Trade Negotiating Committee at the April 1989 meeting is examined in some detail in Miner's paper. Although the April statement provides a framework for negotiating long term reform of support and protection, it is evident that some difficult issues remain to be resolved in the agricultural negotiations.

In the Uruguay Round negotiations, the United States initially proposed a "zero 2000 option" which would involve the elimination of all trade distorting subsidies and import restrictions by the year 2000. The European Community has indicated a willingness to limit subsidies and to liberalize import restrictions but is extremely hostile to the U.S. proposal for full elimination of both sets of measures. Due to the disproportionate influence of rural constituencies in Japan, the Japanese government is also opposed to the U.S. proposal, but appears willing to embark on a program of gradual liberalization. Food security concerns are raised by Japan, Korea, and other food importers in the negotiations. Despite some useful progress in the negotiations in Geneva, the agricultural issue remains deeply divisive.

The policy proposal contained in a recent statement by international trade experts entitled *Reforming World Agricultural Trade* is intended to bridge the gaps among these divergent positions.[6] This "Ottawa Statement" makes recommendations to guide the agricultural negotiations in the Uruguay Round, as well as specific proposals for a framework agreement that could be achieved at the mid-term Ministerial review of the GATT negotiations in Montreal in December.

The Ottawa Statement sets out specific guidelines to provide clear direction and impetus to the negotiations and to ensure longer-term reform. It recommends that the

Uruguay Round negotiations proceed on a comprehensive basis to obtain agreement on the following:

- a program of progressive reductions in the adverse trade effects of agricultural policies;
- guidelines for decoupled or trade-neutral farm policies and positive agricultural adjustment programs;
- policies to encourage conservation of land and water resources and to improve environmental systems;
- stronger and more precise GATT rules, which would be negotiated in parallel with the program of phased reductions in trade-distorting policies;
- arrangements to facilitate full participation by developing countries in the negotiations;
- new mechanisms for surveillance, consultation, and domestic policy co-ordination; and
- the strengthening of GATT dispute-settlement mechanisms.

This proposed approach to the negotiations will ensure realization of the goal of freer trade in agriculture, while avoiding divisive debate about the zero 2000 option. Miner's paper in this volume builds on the Ottawa policy statement and explores a two-track approach to negotiation of policy undertakings and surveillance mechanisms for domestic agricultural policies in conjunction with a strengthening of GATT rules for agricultural trade. Also Smith's paper explores the relationship between agricultural negotiations and the negotiations on subsidies and countervailing duties.

Canada as a substantial agricultural exporter stands to benefit from a ceasefire in the agricultural trade wars and a dismantling of agricultural subsidies and import restrictions. Although Canadian income support and supply management programs are less trade-distorting than some of the price support programs of other countries, Canada must be prepared to negotiate specific aspects of these programs if it wishes to achieve the objective of improved market prospects for Canadian agricultural exports.

Tropical Products

Liberalization of tariffs and non-tariff barriers on some of the exports of tropical agricultural products from developing countries has been identified as a high priority in the Uruguay Round. Some progress was achieved at the Montreal Ministerial in early liberalization of industrial country trade barriers on products such as beverages and horticultural products which do not compete directly with temperate zone producers. However, in areas such as grains and oilseeds where serious problems arise in trade among the developed countries, prospects for liberalization remain slight unless the

larger agricultural trade issues are resolved, because these tropical products compete directly with temperate zone products.

Textiles

Since the early 1960s, exports of textiles and clothing from the "low cost" producers in the Third World to the industrialized countries, including Canada, have been subjected to quantitative controls under special arrangements concluded within the GATT framework. From the mid-1970s, the Multifibre Arrangement (MFA) has provided the cover for these restrictive controls. Most industrialized countries, including Canada, also impose their highest tariffs on imports of textiles and clothing from all sources. The cumulative impact of Canadian tariffs and the MFA quotas results in high trade barriers against apparel exports of developing countries.

The Ministerial declaration for the Uruguay Round states that the negotiations "shall aim to formulate modalities that would permit the eventual integration of this sector in the GATT on the basis of strengthened GATT rules and disciplines".[7] The textiles negotiation proved to be one of the contentious issues that created the impasse at the Montreal Ministerial meeting in December 1988. The mandate for the textiles negotiation was resolved at the April 1989 meeting of the Trade Negotiations Committee simply by reaffirming the objective spelled out in the Uruguay Declaration.

Unravelling the complicated structure of tariff and non-tariff protection in the textiles and apparel sectors is likely to prove at least as difficult a task as resolving agricultural trade issues. Textiles and apparel represent one area of international trade where international barriers have been rising, not declining. There have been marginal declines in apparel tariffs to average levels of 22½ per cent in the United States and 14 per cent in the European Community and Japan, but quota restrictions under the Multifibre Arrangement have been extended both in terms of product coverage and the number of low-cost countries involved. Cline estimates that since the mid 1960s the combined tariff and non-tariff protection for U.S. apparel imports has nearly doubled, to a combined 56 per cent tariff-equivalent protection. On a global basis, quotas under the MFA cover approximately 60 per cent of textiles trade and 65 per cent of apparel trade.[8] The remaining trade occurs primarily among the industrial countries which retain high tariffs, but which do not, as a rule, apply quotas among themselves.

The textile and clothing sectors are among the most protected industries in the Canadian economy. Much of the protection is now focused on the apparel industry. Since the late 1970s, the bilateral quota restrictions that Canada has concluded with low-cost suppliers under the Multifibre Arrangement are heavily concentrated in the apparel sector, and few now apply to textiles. Canadian textiles and apparel tariffs are in the 20-25 per cent range; they are higher than in the United States and probably the highest among the larger industrial countries. The Canadian apparel industry depends to a substantial degree on imported fabrics and, in some cases, can obtain these fabrics duty-free through specific tariff orders granted by the Department of Finance. Moreover,

Canada has some selective duty remission programs which provide apparel manufacturers with additional relief from Canadian textile tariffs; these, understandably, become highly controversial with the United States in the context of the bilateral Canada-U.S. Free Trade Agreement because they are prohibited under the Agreement, except for a specified time period. The Canadian government has indicated that it plans to lower the MFN tariffs on imported fabrics used by apparel manufacturers in cases where those tariffs are significantly above U.S. tariff levels.

The Uruguay Round provides an opportunity to limit the spread of protectionism and to start liberalization of one of the most protected sectors in international commerce—textiles and clothing. However, although Canada may be receptive to liberalization of trade in textiles, its garment manufacturers are likely to resist efforts to liberalize apparel trade and to bring the MFA under stricter disciplines. Nevertheless, the Canadian economy as a whole would benefit if the Uruguay Round were to agree to a program of tariffication which would gradually replace and eliminate the MFA quota restrictions and then start the process of tariff reductions for these highly protected industries. Alternatively, the industrial countries could enter into a commitment to phase out the MFA by a set date.[9] Such an approach would encounter domestic resistance in Canada as well as in the United States and the European Community; but if adopted by the major industrial countries it would provide a powerful inducement for some of the developing countries to participate more fully in the trading system.

Safeguards

Safeguard import measures under Article XIX of the GATT have often been a vehicle for giving additional protection to producers in the developed countries. Such measures were originally intended to respond to surges in imports that injured domestic producers by offering temporary relief in the form of delay or suspension of tariff reductions which have been negotiated in a trade agreement, or by imposing quantitative controls temporarily. However, in recent years, the safeguard provisions of GATT have been used more and more extensively, especially by the United States and the European Community, to restrict import competition on a longer term basis and to enforce managed trade regimes in sectors such as footwear, steel and other products. And the disciplines of the GATT rules over the use of Article XIX safeguards measures have even more often been evaded by the use of "grey-area" restrictive measures with similar effects.

The use of safeguard provisions was a major issue in the Tokyo Round of multilateral negotiations, but those issues proved not to be resolvable. One obstacle was the European Community effort to legitimize the use of "selective" safeguards directed against particular countries; another was pressure by the developing countries to create stricter disciplines on the use of safeguard measures. The issues surrounding the use of safeguards have become even more difficult since the conclusion of the Tokyo Round. Not only has there been broader application of explicit safeguard measures under Article XIX

of the GATT, but there has been a proliferation of "grey-area" measures such as voluntary export restraints, some of which are technically outside of the GATT.

Negotiations on safeguards face a dilemma. If more stringent criteria are introduced which limit the application of safeguard measures under Article XIX, then such stringent criteria for Article XIX safeguard measures could lead to a further proliferation of grey-area measures which are beyond GATT rules and disciplines. On the other hand, some argue that it would be counterproductive to negotiate about grey-area measures such as voluntary export restraint arrangements currently outside GATT rules, because such negotiations could have the effect of codifying these practices and legitimizing them. If the drift toward managed trade is to be reversed, however, it will be important to bring the widest possible range of protectionist measures under GATT rules. Perhaps the most productive approach would be to stress the degressivity or phasing out of these measures, to establish clear time limits for their elimination and to develop new multilateral surveillance mechanisms to monitor the use of safeguards. The issue of safeguards is not examined in detail in this volume, but the papers by Hindley and Smith argue that limiting the opportunities for domestic interests to take actions under the anti-dumping and countervailing duty laws will remove some of the threats, which are utilized in order to obtain voluntary restraints by exporting countries.

Anti-dumping and Countervailing Duty Laws

Some of the managed trade regimes of the 1980s were imposed under the guise of attacks on "unfair" trade practices. The U.S. countervailing duty case in 1986 with respect to Canadian softwood lumber stands out as a notable example. The so-called "unfair" trade issues are being dealt within the GATT in negotiations in the group on *Subsidies and Countervailing Duties* as well as in review of the anti-dumping code in the group on *MTN Agreements and Arrangements*.

Subsidies issues have become among some of the more divisive in international trade. Apart from Canada's experience with softwood lumber, the issue of subsidies has been a source of recent and serious conflict between the United States and the European Community in industries with funding for R&D, such as in the case of Airbus Industries. The U.S. view is that massive European subsidies are giving Airbus an unfair advantage in international commerce. The Europeans counter that some of the subsidies in Europe have resulted from unforeseen realignments in exchange rates and, moreover, that U.S. civil aircraft producers receive substantial benefits from government funding for research and development as well as preferential procurement contracts from U.S. military programs.

It would be in Canada's interest to promote multilateral disciplines on the use of industry specific subsidies which are intended to create monopoly positions in international trade, as may be the case in civil aircraft. Even if this does not prove feasible in the GATT, progress in the Uruguay Round in developing agreed standards and definitions of subsidies, and techniques for the measurement of subsidies, could

significantly benefit Canada in bilateral negotiations with the United States aimed at developing common rules on these issues under the Free Trade Agreement.

Negotiations on other unfair trade issues are proceeding in the GATT as well. The U.S. position on anti-dumping systems, for example, is heavily influenced by recent proposals in the U.S. Congress to strengthen the enforcement of U.S. trade laws. Whereas in the Kennedy Round the United States sought to limit Canada's administrative discretion in the application and enforcement of its anti-dumping laws, today the United States is preoccupied with an enforcement mentality which is trying to plug holes in the dyke of the U.S. unfair trade laws. Thus sanctions against "recidivist" dumping rank high on U.S. negotiating priorities. By "recidivist" dumping United States negotiators are referring to "repeat offenders". Thus, they are seeking to impute criminal behaviour to firms engaged in international price competition.

If one believes that international competition is to be encouraged and not hindered, then some of the proposals for amendment of the GATT anti-dumping code and other rules governing unfair trade practices are likely to be counterproductive to the objectives of an open multilateral trading system. Instead, these negotiations should aim at making the administration of trade laws more transparent and reducing their protectionist effects.

Non-Tariff Measures

Some non-tariff barrier issues are discussed in a separate working group on *Non-Tariff Measures*; others in individual sectoral working groups such as *Natural Resource Products*; and still others in the working group on *MTN Agreements and Arrangements*.

Procurement preferences are among one of the more significant non-tariff barriers to trade which are addressed only to a limited extent by the Tokyo Round code on government procurement. Elimination of internal procurement preferences is a significant element in the proposed efforts by the European Community to complete its internal market by 1992. If the Community is making good progress in these internal efforts, it may be reluctant to open European government procurement markets to international competition. But, if European efforts are flagging, progress in these issues in the GATT might help resolve internal EC differences.

Procurement issues have been a source of conflict between the United States and Japan, as well. An enlargement of commitments under the GATT procurement code could help to resolve some of these U.S.-Japan differences.

For Canada, an enlargement of the coverage of the GATT procurement code could offer significant benefits. The provisions of the Canada-U.S. FTA with respect to government procurement are limited to entities covered under the GATT procurement code. The Canada-U.S. FTA simply expands the purchases covered by imposing a lower threshold with respect to contract awards and also establishes a new mechanism for

review of contract procedures and awards. Canada would be a significant beneficiary if the multilateral GATT procurement code were extended to cover sectors such as telecommunications equipment, heavy electrical generation equipment and urban transit equipment. Broadening the coverage of the procurement code would open up markets simultaneously in the United States, the European Community, and the EFTA countries. A substantial result on procurement could allay concerns about Fortress Europe and help contribute to resolution subsidy and countervailing duty issues—see Janet Nuzum's comments in this volume.

Services

The GATT negotiations on services are still at a relatively early stage. David Lee's paper explores the various conceptual issues, which are now being considered by negotiators in Geneva. A number of countries have tabled proposals for a framework agreement on services and there is some agreement on some basic concepts, most notably elaboration of the concept of "national treatment" which is embodied in the GATT rules for merchandise trade. A national treatment commitment should not be difficult. Most industrial countries are signatories to bilateral commercial treaties which contain national treatment obligations for investment and some services.

It is also proposed that a framework agreement should include the right of establishment and deal with the potential predatory practices of state monopolies. But serious questions remain about the sectoral coverage of such a framework agreement and the nature of the institutional mechanisms which will govern services trade.

The U.S. proposal in Geneva involves the conclusion of a framework agreement analogous to that contained in the Canada-U.S. Free Trade Agreement and proposes a three step process to liberalize trade in services. The first step would be agreement on the framework rules and provisions; the second step would be agreement on the specific services activities to be covered; and the third phase would be the negotiations of rollback measures (reservations to, or derogations from, the initial agreement) which impede trade in services or deviate from national treatment. Thus, the United States seeks to avoid some of the grandfathering of restrictions on services trade and departures from national treatment which are permitted in chapters 14 and 16 of the Canada-U.S. Free Trade Agreement.[10]

During the 1982 GATT Ministerial meeting, the United States attempted to bring services into the GATT in order to apply its "unfair" trade laws in the services sector. It is noteworthy that the U.S. services proposal in the Uruguay Round (and also the relevant provisions of the Canada-U.S. FTA) does not make provision for the application of countervailing duty, anti-dumping duty or other specific actions in the services sector. Of course, it is possible under U.S. law to pursue section 301 actions against foreign practices which burden U.S. commerce. Furthermore, the recent legislative changes to section 301 increase the likelihood of retaliatory action. Thus, unilateral U.S. actions can be taken now against Canadian policies and in the absence of either a multilateral agreement on

trade in services or the services chapter and dispute settlement mechanisms in the Canada-U.S. Free Trade Agreement, there are no international constraints on U.S. retaliatory powers.

The U.S. proposal in the Uruguay Round refers to the need for an effective dispute settlement mechanism, although it is not very explicit on this point. The advantage of a rules-based system of dispute settlement, as discussed below, is that it provides a more secure and predictable regime for the private sector. It has the additional virtue that an international dispute settlement mechanism (whether in the FTA or the GATT) provides significant protection against unilateral U.S. trade actions, because section 301 provisions require resort to an international dispute settlement mechanism, when such a mechanism is contained in an international agreement.

The EC approach in Geneva to trade in services seems to parallel the internal operations of the Community. Instead of a clear set of international obligations covering specific services activities, the Community seeks to have a supervisory committee which would monitor national policies and regulatory measures affecting trade in services. Services regulations would be notified to this monitoring body and their appropriateness judged in light of the norms established in a GATT services agreement. Thus, the services agreement would create a permanent supervisory body which would review individual national services policies and regulations in detail. The EC proposals also suggest that an unspecified, but large number of specific sectoral services agreements may be necessary in order to give effect to the overall framework arrangement.

Developing countries, led by Brazil and India, resisted strongly the U.S. proposals to include services in the GATT at the 1982 Ministerial meeting and during the subsequent efforts to launch the Uruguay Round. Subsequent analysis and debate has led to some moderation in the positions of at least some developing countries.[11] Developing countries are no longer taking a hard line as a bloc opposing the negotiations on services. Argentina, for example, has presented a paper which makes suggestions for a services agreement suggesting that it would be prepared to participate if progress could be made on other issues such as agriculture. Nonetheless developing countries are wary of a possible services agreement and uncertain about how they might participate in the agreement.

Subject to the specific provisions of the arrangements which might be negotiated on services in the Uruguay Round, it would to be in Canada's interests to broaden the number of countries which have contractual obligations with respect to controls on trade in services or related investment issues. Several caveats should be kept in mind. First, it would be important to extend the exclusion of cultural industries which was obtained in the Canada-U.S. Free Trade Agreement to any multilateral arrangement. Failure to exclude the cultural industries in the multilateral services agreement could make participation unattractive to many Canadians. Second, it is important to avoid a supranational mechanism which could impose additional delays on decision making as well as raising concerns about national sovereignty. Third, it may be difficult to balance the rights and obligations of a large number of countries under a general services agreement of the sort proposed by the United States. Thus, specific sectoral agreements may well be necessary to give effect to the overall framework agreement. Fourth, the

Uruguay Round negotiations on services have not yet focused on the specific form of the dispute-settlement mechanisms which might be adopted as part of a new services agreement under the GATT framework. Whatever the substantive provisions of new arrangements for trade in services, it is in Canada's interest to adopt a dispute-settlement mechanism for services analogous to that in the general dispute-settlement mechanism proposed in the Canada-U.S. Free Trade Agreement, in order to avoid potential unilateral measures directed against Canadian service industries or government policies.

In an increasingly interdependent world, barriers to trade in services can be barriers to trade in goods and vice versa. Canadian industries would benefit from a multilateral services agreement as exporters of services, as importers of services, as exporters of goods and as producers of complex bundles of goods and services. Services issues are almost unavoidable in a global economy governed by nation states, but the litmus test for Canada is whether a multilateral services agreement does in fact create a more transparent, a more open, and a more predictable international regime for services transactions.

Trade-Related Investment Measures

There is a separate negotiating group dealing with trade related investment measures (TRIMs). This group is attempting to deal with various kinds of performance requirements which governments obtain from firms as a condition for investing in their countries. The undertaking regarding performance obtained by the former Foreign Investment Review Agency (FIRA) in Canada was the subject of a GATT dispute-settlement process in the early 1980s. The GATT panel report, which was accepted by Canada, found that the undertakings extracted from foreign firms to reduce import sourcing were contrary to the GATT, but that undertakings pertaining to increased exports were not covered explicitly by GATT rules. The developed countries are seeking in the Uruguay to amend the GATT rules to permit a much narrower range of performance requirements that may be extracted from foreign investors.

Trade-Related Intellectual Property Issues

The group on *Trade-Related Intellectual Property Issues (TRIPs)* is negotiating one of the most controversial sets of issues in the Uruguay Round. These issues overlap those surrounding trade in services, investment and high technology procurement. With the globalization of production and trade in many industries, including the high technology industries, the United States and most other developed countries are attaching a high priority to obtaining greater protection of intellectual property rights, and embodying this protection in new GATT rules. Many developing countries, however, stress the importance of access to technology and are much less concerned about protection of

incentives to innovate. A publication prepared for developing countries on the Uruguay Round by UNCTAD contains the following observation:

> "From the point of view of developing countries an important concern is for a clear recognition of their legitimate rights to take action to prevent the abuse of intellectual property (e.g. market control, unjustified high rent, etc.), as well as to develop their own knowledge intensive industries, without running the risk of trade reprisal . . . Vital technological and trading interests of our countries are involved in the TRIPS negotiations and the search for solutions which satisfy all parties is likely to be difficult, and may be linked to developments in the other negotiating groups.[12]

Canada has a major interest in the TRIPs negotiations as a major trading country, and as a major importer of technology. Canadian producer interests extend both to trade in counterfeit goods—where there is an abuse of trademarks—as well as to more difficult issues of establishing appropriate standards of patent and copyright protection in the laws of Canada and its trading partners. A further issue is the role of GATT in this area. Some of the more aggressive supporters of negotiations on intellectual property in the United States favour the promulgation within the GATT of standards of intellectual property protection. Others, including the Atlantic Council in the United States, suggest that the GATT may be most effective in dealing with the problem of counterfeit goods and helping in the enforcement of intellectual property regimes which affect international trade; but they argue that the appropriate standards should be developed by other organizations such as the World Intellectual Property Organization (WIPO), not by the GATT.[13]

In the negotiations of TRIPs, Canada may find itself closer to the position of developing countries, notably Pacific Rim countries. Certainly, drug manufacturers in the United States and continental Europe regard Canada's compulsory patent licensing regime and the performance requirements recently introduced with respect to research and development by pharmaceutical companies to be an abuse of their intellectual property rights and to be a distortion of international trade.

The tendency towards unilateral actions by the United States and the European Community directed against foreign countries which do not provide 'sufficient' protection of intellectual property rights may lead Canada to be more forthcoming in the GATT negotiations on this issue than Canada was prepared to be in the bilateral Free Trade negotiations with the United States. The 1988 omnibus U.S. trade legislation amends Section 337 of the Tariff Act of 1930 to make the provision more onerous, and more accessible, U.S. penalties against infringement of intellectual property rights. However, a GATT panel has ruled against the Section 337 procedure. At present, the United States is blocking adoption of the panel report. Developing a GATT agreement on intellectual property may involve some additional international obligations to protect intellectual property, but could offer significant protection against such unilateral actions, including the Special 301 provision of U.S. trade legislation which is directed at intellectual property violations.

Strengthening the Trading System

The stresses in the global trading system in the 1980s have made more visible some of the weaknesses in its institutional elements, as well as in the trade rules. Proposals to reform the trading system have been made both before and during the Uruguay Round. Some of these proposals came to fruition at the ministerial mid-term review in Montreal in December 1988.

The reform proposals involve two separate but complementary elements. The first involves the development within the GATT of new mechanisms for the surveillance of national trade policies. The second element involves a strengthening of the GATT procedures for the settlement of trade disputes.

Policy Surveillance

The Uruguay Round has already created a new surveillance mechanism to monitor compliance with the standstill and rollback provisions contained in the Punta del Este declaration. Negotiations are proceeding in the group called *Functioning of the GATT System* to develop this type of surveillance mechanism on a permanent basis; this proposal was accepted at the Montreal Ministerial meeting.

The rationale for surveillance bodies or mechanisms was set out in the 1985 report of the Leutwiler group of wisemen.[14] Since the GATT system functions in part on the basis of international pressure, the publication of regular studies documenting the protectionist effects of trade policies, combined with regular ministerial meetings to review national trade policies, would make protectionism more visible and transparent and help mobilize pressures for trade liberalization.[15] Closely related to proposals for increased international surveillance are proposals for domestic transparency institutions which will contribute to greater public awareness of the costs of tariff and non-tariff trade barriers.[16]

Dispute Settlement

International scholars describe regimes for resolving trade disputes as being characterized by either of two extremes. One extreme is a power-based system where a dispute is resolved by *ad hoc* bargaining between the parties. Often larger countries prefer this type of regime because they can exert greater leverage over smaller countries and trading partners. At the other extreme is a rules-based system, where disputes are resolved by reference to specific contractual obligations or norms and are subject to adjudication by impartial judges or arbitrators.[17]

The GATT dispute settlement mechanism has developed some of the features of a rules-based system in the form of references to independent panels to investigate whether GATT rules have been breached. However, the GATT dispute-settlement mechanism remains fundamentally a consensus system. This makes it possible, on occasion, for a large country such as the United States or the European Community to stonewall the creation of a panel to investigate a trade dispute, or to block the acceptance of a GATT panel report when it is presented, if the outcome is unfavourable to its interests.

The general dispute settlement mechanism in the Canada-U.S. Free Trade Agreement conforms more closely to a rules-based regime. Apart from the reference to binding arbitration when both parties agree, either party can request a panel and the process is then automatically initiated. Furthermore, there are strict procedures and timetables for panel deliberations and for decisions on panel reports by the Canada-U.S. Trade Commission.[18]

Proposals for the reform of the GATT dispute-settlement mechanism involve the adoption of some of the features of the Canada-U.S. Free Trade Agreement.[19] Progress is being made on developing stricter timetables and improving the procedures for the operation of panels; but the major players, most notably the European Community, at least until recently, have resisted the concept of automatic initiation and acceptance of panel investigations. However, the Montreal Ministerial meeting was able to reach agreement on changes in the timetable for dispute-settlement procedures and to the concept of right to a panel or automatic initiation. One important difference that remains between the new general dispute-settlement mechanism of Chapter 18 of the Canada-U.S. Free Trade Agreement as compared with the modified procedures under the GATT is that adoption of GATT panel reports is still subject to consensus acceptance by the GATT council while adoption of the panel reports is automatic under the FTA. A number of commentators have suggested that the GATT dispute-settlement procedures should be modified to make adoption of panel reports automatic, unless a special procedure is invoked by the Council to review a contentious panel report.[20]

The interest of Canada and other highly trade dependent Pacific economies, which are smaller then the economies of the European Community, the United States or Japan, clearly lies in strengthening the GATT dispute-settlement procedures. In particular it is in the interest of middle-sized and smaller economies to support a rules-based system which could provide for the adoption of panel investigations on the consensus minus two rule, or for the mandatory adoption of panel reports if they are not accepted by the parties to a dispute within a set period of time.

The major GATT trading partners apparently share the common objective of strengthening GATT rules and dispute-settlement processes, but Canada and other like-minded Pacific economies should press other countries to give practical effect to these general principles in the Uruguay Round. In this respect, the Canada-U.S. Free Trade Agreement could offer some useful models and precedents, although the specific Canada-U.S. mechanisms are likely to remain unique to the bilateral relationship, such as the appeal mechanisms under Chapter 19 governing application of, or legislative amendments to, the anti-dumping and countervailing duty laws.

Strengthening the GATT dispute-settlement procedures would address some of the congenital weaknesses of the GATT stemming from the failure to ratify the ITO and contribute significantly to reinforcing the multilateral trading system. In particular, strengthened GATT dispute-settlement procedures could serve to constrain the unilateral application of U.S. Section 301 and the analogous commercial policy instrument of the European Community. However, achieving constraints on the unilateral actions by the United States or the European Community will require significant progress in the negotiations overall and in the negotiations on intellectual property and services issues in particular.

The Pacific in the Global Trading System

As the statements by Baker, Crosbie, and Hawke noted earlier make clear, the current focus of Pacific cooperation is focused on efforts to complete the Uruguay Round. Yet, many observers interpret current proposals for Pacific Economic Cooperation as leading ultimately to a Pacific Free Trade Area. Initially, smaller and middle-sized economies might form free trade areas.[21] There might be a series of bilateral free trade agreements between the United States and individual Pacific countries. Or there might be one Pan-Pacific Free Trade Area linked in some way with the Canada-U.S. Free Trade Agreement.

Canadian Trade Policy after the Canada-U.S. Free Trade Agreement

The crucial difference between a free trade area and a customs union is that in a free trade area each member maintains control over commercial policy for, and trade negotiations with, third countries. Canada, and also the United States, recognizes that the members of a free trade area have a continuing interest in the international trade rules which provide the framework for managing trade relations and trade disputes. Each member continues to have separate trade relations with third countries, and important elements of the multilateral rules will continue to govern their bilateral trade.

In contrast, a common market with elaborate supranational institutions such as the European Community is less likely to be outward looking in its orientation. Indeed, the drive to complete the internal market of the European Community by 1992 will have an important influence on the Uruguay Round. It is too soon, however, to judge the precise nature of this interaction. The Community may see multilateral progress in liberalizing government procurement and services trade as a way to achieve its internal objectives. Alternatively, however, Europe may seek to open its internal market while maintaining or increasing protection against third country competition in order to compensate domestic interests who resist liberalization.

In the Uruguay Round, Canada will need to address the services, investment and intellectual property issues which proved controversial in the Canada-U.S. negotiations,

since these issues are high priorities for the big three. Canadian sensitivities on cultural industries and intellectual property issues may make Canadian participation difficult. Yet, multilateral agreements on these new issues, and related problems pertaining to subsidies and unfair trade, could help protect Canada against unilateral actions under the trade laws of the United States or the European Community.

Even with the Free Trade Agreement implemented, Canada has a vital interest in the Uruguay Round and the strengthening of the GATT system. The Uruguay Round negotiations are not an alternative to the Canada-U.S. Free Trade Agreement; the two approaches are complementary. If Canada is going to have some success in resolving agricultural trade problems and in achieving access objectives in offshore markets for upgraded resource products and high technology manufactured goods, Canada will need to continue to build coalitions such as the Cairns Group. Canada can play a helpful role in bridging the differences between developed and developing countries. Canada and the other middle-sized and small economies have the greatest stake in an open and more effective multilateral trading system, and thus, should be prepared to play an active and constructive role in the Uruguay Round. The real test of whether a regional trading arrangement is trade liberalizing is whether the members are prepared to negotiate subsequent multilateral liberalization.

The Global Trading System

The Uruguay Round is the most complex and protracted set of multilateral negotiations ever held under GATT auspices. Old problems, such as agricultural trade problems, textiles trade, and safeguards, present serious challenges to resolution. New issues, such as trade in services, investment and intellectual property, are also likely to present serious difficulties for the negotiations.

Much rides on the outcome of the Uruguay Round and many difficult issues will need to be resolved in the negotiations over the next year culminating in the ministerial meeting in Brussels in late 1990. The deadline is a firm one because of U.S. legislative provisions. The U.S. negotiating authority expires shortly thereafter, but since the authority may be renewed unless the key Congressional committees vote to disapprove renewal, this factor is not as critical as has been the case in previous GATT rounds. A much more compelling set of pressures are the deadlines imposed on the U.S. Administration to report on progress on Section 301 negotiations and to initiate trade retaliation if progress is not achieved by the end of 1990.

Few argue for a Pacific trading bloc even if the Uruguay Round goes badly. Indeed, if the global trading system starts to fracture along a fault line involving the Pacific economies on one side and the European Community along with an emerging Eastern Europe and the Lome countries on the other, then the world will be poorer. Schott argues that the United States should reject bilateral free trade agreements—except possibly with a close neighbour such as Mexico—and focus its negotiating efforts on the Uruguay Round and the GATT.[22] If the Uruguay Round achieves only very limited results, then a

number of commentators have argued that the Pacific countries should focus on GATT-plus or conditional MFN arrangements, which are open to other countries, instead of trying to create a Pacific Free Trade Area.[23]

The clear immediate priority for the Pacific countries is to develop collaborative strategies to promote liberalization of trade and revitalization of the multilateral trading system in the critical final stage of the Uruguay Round negotiations. Whatever the specific outcomes of the Uruguay Round and however Delphic the texts which emerge from the Brussels Ministerial meeting, the Pacific countries are recognizing their common interests in an open multilateral trading system that constrains unilateral actions by the major economic powers and sustains the expansion of global commerce. The Pacific countries can take an active role in shaping the evolution of the global trading system into the 21st century.

Notes

1. The Honourable John Crosbie, this volume, p. 61.
2. Speech by Australian Prime Minister Bob Hawke, in Seoul, Korea on January 31, 1989. Text provided by the Australian Overseas Information Service, Department of Foreign Affairs and Trade, Canberra, Australia.
3. Ibid.
4. The Honourable John Crosbie, *Notes for an Address by the Minister for International Trade*, March 21, 1989, at the New Zealand Institute for International Affairs and the Institute for Policy Studies. Wellington, New Zealand.
5. Speech by Secretary of State, the Honourable James Baker, to the Asia Society.
6. Institute for International Economics and Institute for Research on Public Policy, *Reforming World Agricultural Trade: A Policy Statement by Twenty Nine Professionals*, May 1988. See also William Miner and Dale Hathaway (eds.), *World Agricultural Trade: Building a Consensus* (Institute for International Economics and Institute for Research on Public Policy, 1988).
7. General Agreement on Tariffs and Trade, "Ministerial Declaration on the Uruguay Round" GATT 1396, 25 September 1986.
8. William Cline *The Future of World Trade in Textiles and Apparel* (Washington, D.C.: Institute for International Economics, 1987), pp. 12-13, 165-169.
9. Yamazawa favours this approach because tariffication transfers rents from developing country exporters to the industrial countries. Ippei Yamazawa, "Textile Trade Issues in the Uruguay Round", paper presented at PECC Trade Policy Forum in Vancouver, June 26, 1989.

10. Jeffrey Schott and Murray Smith, "Services and Investment Issues", in J. Schott and M. Smith (eds.), *The Canada-United States Free Trade Agreement: The Global Impact* (Washington, D.C., and Halifax: The Institute for Research on Public Policy, 1988).

11. Jagdish N. Bhagwati, "International Trade in Services and its Relevance for Economic Development," Xth Annual Geneva Lecture at London School of Economics, and the Graduate Institute of International Studies, Geneva (1985); Brian Hindley and Alasdair Smith, "Comparative Advantage and Trade in Services," *The World Economy*, pp. 369-390, (1985); and Robert M. Stern, "Global Dimensions and Determinants of International Trade and Investment in Services," in Robert M. Stern (ed.), *Trade and Investment in Services: Canada/U.S. Perspectives* (Toronto: University of Toronto Press for the Ontario Economic Council, 1985).

12. United Nations Commission on Trade and Development. "Developments in the Uruguay Round", May 4, 1988, page 43.

13. The Atlantic Council of the United States, *The Uruguay Round of Multilateral Trade Negotiations Under GATT: Policy Proposals on Trade in Services* (Washington, D.C.: Atlantic Council, 1987).

14. F. Leutwiler et al., *Trade Policies for a Better Future: Proposals for Action* (Geneva: GATT, 1985).

15. Richard Blackhurst, "Strengthening GATT Surveillance of Trade-Related Policies", in Meinhard Hilf and Ernst-Ulrich Petersmann (eds.), *The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Aspects* (1988).

16. Olivier Long et al., *Public Scrutiny of Protection* (London: Trade Policy Research Center, 1989).

17. See John H. Jackson, "The Birth of the GATT-MTN System: A Constitutional Appraisal," *Journal of Law and Policy in International Business*, vol. 12, no. 1 (1979), and John H. Jackson, "Government Disputes in International Trade Relations: A Proposal in the Context of GATT," *Journal of World Trade Law*, vol. 13, no. 1 (1979). Also Robert Hudec, "GATT Dispute Settlement After the Tokyo Round: An Unfinished Business," 13 *Cornell International Law Journal* 145 (1980) and R. Hudec, "Reforming GATT Adjudication Procedures: The Lessons of the DISC Case," 72 *Minnesota Law Review* 1443 (1988).

18. Gary Horlick, Geoffrey Oliver and Debra Steger, "Dispute Resolution Mechanisms" in Jeffrey Schott and Murray Smith (eds.), *The Canada-United States Free Trade Agreement: The Global Impact* (Washington and Ottawa: Institute for International Economics and Institute for Research on Public Policy, 1988).

19. See comments by R. Hudec and J. Katz comparing the FTA dispute-settlement process and the GATT in Donald McRae and Debra Steger (eds.) *Understanding the Free Trade Agreement* (Halifax: The Institute for Research on Public Policy, 1988).

20. William Davey, "Reforming GATT: Dispute Settlement and the Functioning of the GATT System", paper presented at the University of Ottawa, May 5, 1989. Forthcoming in R. Dearden, M. Hart and D. Steger, *Living with Free Trade*.

21. Sir Frank Holmes, Ralph Lattimore and Anthony Haas, Institute of Policy Studies for the New Zealand Trade Development Board, *Directions in Foreign Exchange Earnings: Partners in the Pacific* (Wellington: New Zealand Trade Development Board, 1988), and Sir Frank Holmes (ed.), *Stepping Stones to Freer Trade? Canadian, Australian and New Zealand Perspectives* (Wellington: University of Victoria Press, 1989).

22. Jeffrey J. Schott (ed.), *Free Trade Areas and U.S. Trade Policy* (Washington, D.C.: (Institute for International Economics, 1989).

23. Ibid. See also comments by English and comments by Drysdale and Garnut in *Stepping Stones*.

Part I

The Pacific in the Uruguay Round:

A Canadian Perspective

The Pacific in the Uruguay Round: A Canadian Perspective

Germain A. Denis
Office of Multilateral Trade Negotiations

I would like to use this opportunity to discuss some of the fundamental issues on the Uruguay Round agenda, which are of considerable importance to the future of Pacific Rim trade and investment relations, focusing particularly on the issues that will largely determine the success of the current GATT negotiations, the Uruguay Round.

Naturally my perspective is influenced by my experience as a trade negotiator. The experience of the Tokyo Round (from 1975 to 1979) suggests that it is not the structural adjustment to trade liberalization or the constraints of new trade rules and disciplines that are the most difficult decisions for participants and that are the source of subsequent regrets. Rather, it is the lost opportunities to improve market access conditions further when the opportunity exists in GATT negotiations or the failure to agree on new multilateral rules where the need clearly exists which can create difficulties for policymakers. I have in mind the fact that Japan did not reduce more of its own trade barriers on resource and manufactured products some 10 years ago in the multilateral negotiations, only to find that its huge and regular trade surpluses forced it to reduce many of those barriers either unilaterally or under bilateral pressure from the United States. I have also in mind the issue of import safeguards which is closely linked to the problems of managed trade, the use of which has proliferated greatly since the Tokyo Round failed to reach agreement on safeguards code.

The experience of negotiating Canada's automotive export restraint arrangements with Japan during the 1983-85 period showed how trade and investment are related increasingly closely in the management of growing economic interdependence across the Pacific. It also suggested to me that trade is not an end in itself but a means to economic growth. Trade rules, trade principles and market access conditions come under serious

stresses when the manufacturing engine of economic growth is under severe pressure to adjust to new and powerful competition from Asia and elsewhere.

My intimate involvement in the negotiation of the free trade agreement with the United States suggests to me that trade liberalization is the fundamental issue. Bilateral and multilateral negotiations are means to ensure that trade liberalization forces will prevail, both within North America and *vis-à-vis* the rest of the world. Indeed, the FTA negotiations and the prospects of the Uruguay Round helped to contain the more protectionist features of the U.S. Omnibus Trade Bill of 1988. The FTA negotiation in the trade remedy area also showed that the key issues are not so much a matter of bilateralism or multilateralism but rather a matter of how much international discipline can be put on unilateral trade restrictive actions.

As to the Uruguay Round so far, it seems to me that its success will be determined largely by the positions and initiatives of participants from the Pacific Rim. This is because of the challenges of growth and diversity presented by the Asia/Pacific region.

The MTN: A Response to Global Interdependence

The international context for Canada's participation in the Uruguay Round is our growing global interdependence, which we share with many countries across the Pacific. It is based on the belief that maintaining an open world trading environment is a crucial element in sustaining trade, investment and economic expansion. It is only in that kind of environment that satisfactory solutions to the current problems of international indebtedness of developing countries can also be found.

We view reform and expansion of the GATT system to new areas like trade in services and trade-related intellectual property and investment issues as conditions for defusing the tensions in trade relations that have accompanied the welcome dynamic and export-led growth of Asian economies. We believe that a strong and viable GATT, which has contributed so much to sharing the prosperity around the Pacific Region, can be maintained only if international rules work for the benefit of all and if the level of obligations goes hand in hand with the evolving status of national economies in world markets.

We see a timely and successful conclusion of the Uruguay Round as the best defence against the threats to the world trading system posed by protectionism and unilateralism, ever-present in a situation of continuing large trade imbalances. The size and persistence of these imbalances put political strains on the management of trade relations and undermine support for the open trading system, particularly in the United States. A successful GATT negotiation is necessary to defuse the time-bomb that is the Super 301 section of the U.S. trade and competitiveness legislation. It will not go away unless the issues underlying these threats are resolved.

We also believe that a major comprehensive outcome of the Uruguay Round is necessary to maintain a reasonable balance between the forces of regional market integration and those of the global village where technology, capital and know-how move increasingly fluidly across national borders worldwide. We see the expansion of trade and investment opportunities through non-discriminatory trade liberalization and the development of better and fairer trade rules as the common link to both regional and global trading arrangements. A successful Uruguay Round is a condition for ensuring that developments in Europe, North America and the Pacific will be outward-looking, avoiding the tendency to become protectionist trading blocs in opposition to each other.

We see the free trade agreement between Canada and the United States as a stepping stone for enhancing Canada's trade and investment relationships globally. A large part of the competitiveness challenges facing Canadian manufacturing industries in the domestic and American markets has been coming from Japan and the newly industrialized economies in the Pacific. As the FTA creates the basis for Canadian industries to become fully competitive on a North American basis, these industries will be in a better position structurally to compete both in domestic and in global markets.

The FTA is a means to attract more offshore investment and technology to Canada to serve the whole North American market—a prospect spurred by the globalization of Japanese economic activities and those of our other Asian partners. The end is to improve market access conditions for Canadian goods and services globally and to increase our security of access to these markets through more effective trade rules and commitments under the GATT. This means tackling both formal and informal trade barriers.

The various initiatives underway in the Asia/Pacific Region to increase economic co-operation and to facilitate political dialogue should help ensure that the challenges of growth are responded to in a way that will indeed expand international trade. Some formal regional trade arrangements already link the ASEAN countries or Australia and New Zealand. However, the Asia/Pacific Region has a great deal at stake in a modernized GATT, and there seems to be consensus that energies must, for the time being, continue to be concentrated on a successful outcome of the Uruguay Round. Increased co-operation and consultation across the Pacific is no substitute for a stronger GATT, nor is it a code word for the creation of a Pacific trade bloc as a fallback to GATT. A common goal is to make the global trade talks successful in opening further opportunities in the Asia/Pacific region.

In this context, a Europe gaining confidence with the achievement of a single integrated market in 1992 will be a better trading partner for all countries in the Pacific. This is better than a Europe pessimistic and defensive with respect to technology, investment and imports from North America and Asia.

Agriculture and the Pacific

We need a more open Europe to deal with agriculture as a critical issue of the Uruguay Round. Successful agricultural trade reform will be tremendously important for countries in the Asia/Pacific Region, because some of the major world markets and some of the most efficient producers and exporters are located there. Indeed Canada, Australia, New Zealand, Thailand, Malaysia and Indonesia have been working together in the Cairns Group to provide leadership in seeking solutions to agricultural trade problems.

A substantial reduction of trade-distorting subsidies, including the elimination of U.S. and European export subsidies, will benefit producers and exporters of cereals and livestock. To a considerable extent, the competition between these national treasuries is a battle to take away Asian markets from traditional suppliers as well as to increase shares of these growth markets. This unfair use of national treasuries to support cereals trade also depresses world market prices for commodities like rice.

A major contribution to bringing about international agricultural trade reform will need to come from Japan and Korea. A substantial reduction of their tariffs and non-tariff barriers to agricultural trade is, and must be acknowledged to be, a central element in maintaining and strengthening the open multilateral trading system on which they depend so much for their trade success. Import barriers must be reduced multilaterally in a way that benefits equally small and large exporters alike. We cannot rely only on the most favoured nation principle of the GATT to benefit from the U.S. market opening strategy, buttressed by its use of the Super 301 trade weapon. Even if these import barriers are formally reduced for all exporters in practice, the particular product mix and the concessions made under those bilateral conditions are often inevitably tailored to respond primarily to the preoccupations and interests of U.S. exporters.

The agricultural negotiating framework agreed to in Geneva in April 1989 recognizes that agricultural trade reform will need to take account of the legitimate concerns expressed particularly by Japan and Korea about food security. This was also part of the 1988 Communiqué from the Toronto Economic Summit, where the political consensus for establishing a fair and market-based agricultural regime was developed. It is now incumbent upon Japan and other food importers to make specific proposals on what they see as the necessary elements for ensuring stable and predictable access to competitive supplies of basic foodstuffs for its consumers in a manner compatible with the trade liberalization objectives of this Round.

For their part, Cairns Group Ministers, at their meetings in New Zealand in March 1989, made clear their concerns that food security considerations not be used as a protectionist disguise to resist the substantial reduction of trade barriers and trade-distorting domestic subsidies. From a Canadian point of view, there is also a need to ensure that food security not be used to frustrate meaningful trade liberalization objectives for fish products, which are also a major component of Asian diets.

The interests of exporters and importers alike across the Pacific are also going to be intensively engaged in the development of the trade rules that will underpin overall agricultural trade reform. More open market access conditions and fewer government

distortions to trade are important but not enough: there must be predictable and effective trade rules that will apply and bind equally all trading partners. From a Canadian perspective this means that:

- the policy instruments of the European Common Agricultural Policy (the CAP) will need to operate within the new GATT rules;
- the U.S. GATT waiver, which exempts large segments of U.S. agricultural policy from the disciplines of the GATT if there is a conflict with domestic support programs, will have to be removed;
- Japan and Korea will have to complete the removal of their import restrictions, some of which are hardly defensible under GATT now;
- Australia and New Zealand will have to operate their trade-restrictive systems of agricultural health and sanitary regulations in a manner that does not constitute unnecessary barriers to trade;
- major developing country exporters should accept international trade disciplines in a manner commensurate with the benefits that they get from world markets; and
- Canadian agricultural programs will need to be operated in a manner consistent with the new trade regime, including in respect of conditions for domestic supply management programs under clearer GATT rules.

Market Access for Resource and Manufacturing Products

In this Round, tariffs on industrial products are not a matter of as much priority as in previous GATT negotiations. However, bringing both tariffs and non-tariff barriers down substantially further and binding them against increases remain central objectives for many countries, including Canada. The negotiating frameworks agreed to by Ministers at Montreal envisage an overall tariff reduction of about one-third, that is, an order of magnitude at least comparable to that of the Tokyo Round. They also envisage the possibility of tariff elimination and dealing with tariff escalation issues on resource-based products. Improvements for tropical products were also made in Montreal, with Canada's offer to be implemented on July 1, 1989.

In determining specific Canadian objectives with respect to individual sectors and export markets, we are working closely with the private sector, particularly the 13 Sectoral Advisory Groups on International Trade (SAGITs). The Minister for International Trade has also sought written submissions from individual firms and interested groups in respect of their particular export priorities and import sensitivities on the Canadian market. As well, the inputs of all bilateral trade and industry associations between Canada and individual countries in the Pacific have been canvassed

by a task force on Pacific trade relations set up by the International Trade Advisory Committee (ITAC).

The advice that we are getting obviously reflects the structure of Canada's trade across the Pacific, which is characterized essentially by resource exports to Asia and by manufactured and high technology imports from Asia. In this context, it remains a traditional Canadian objective to secure our access to meet the demand for Canadian resource products in the growth markets of Japan and Korea. It is, however, a higher priority to improve access through substantial reductions of Japanese and Korean non-tariff barriers and tariffs on value-added processed products such as wood products, paper and paperboard, fish products, petrochemicals, and non-ferrous metals.

It is also a priority to ensure that Canada will be able to participate fully on a non-discriminatory basis in competitive opportunities in some advanced technology areas such as telecommunications and software, for which informal barriers remain more difficult to negotiate. In this regard, a clear commitment by Japan to continue structural reforms, including reform of its internal distribution system, would help to make the reduction of border barriers more meaningful to foreign suppliers. We are also looking to a significant access negotiation with Australia, where 80 per cent of Canadian exports of processed and manufactured goods enter under most favoured nation rather than under Commonwealth preferential rates.

In determining Canada's contribution to a meaningful tariff reduction package, we will obviously look to ensure that our tariff policy encourages offshore investors to locate in Canada to serve the North American market under the FTA. We will also want to ensure that we obtain real and full benefits for Canadian exporters. It is clear that the Canadian business community sees a need for the Uruguay Round to lead to further integration of newly industrialized countries into the GATT system. The acceptance of more equal market access commitments by countries such as Korea and some of the ASEAN countries will be a test for this Round, just as the acceptance of various GATT codes and disciplines on non-tariff measures will be a test for the fairness and effectiveness of multilateral trade rules.

Some very difficult market access decisions are ahead of us, since a purpose of this Round is to bring the textiles and clothing sector back fully into GATT. As the largest exporters are all located in Asia, the future of the multi-fibre arrangement (expiring in 1991) has a particular Pacific dimension. The textiles issue, however, is also a classic case of the need to ensure that the Uruguay Round brings about reasonable new opportunities for the areas where the adjustment to a more open environment will occur. It is also a case where the suggestion that exporters themselves should open up their own markets to foreign competition is a reasonable way to go.

Trade Rules and the Pacific

This leads me to the main trade law issues on the agenda of the Uruguay Round; that is, safeguards, subsidies/countervail and dispute settlement.

Safeguards is one of the most complex systemic issues; yet it is a necessary component of a reformed GATT system. There was a failed attempt during the Tokyo Round to update the current GATT Article XIX system of emergency import safeguard actions. Since then, special bilateral managed trade arrangements have proliferated, with textiles and automotive arrangements as the most visible examples.

Under managed trade arrangements, both sides seem to see their benefits in restraining the competitive forces at play in individual sectors. However, these arrangements move the overall GATT system further and further away from the classic trade norms of open and fair competition, transparency, and multilateral management of the system. Managed trade, if truly for short application, may provide some breathing space for industries to adjust, but it defers necessary structural adjustment. There is also a tendency on the part of some major importers in Europe to use anti-dumping price undertakings—in effect, to introduce selective safeguard actions against fair trade conditions. It is the smaller countries, whether exporters or importers, that seem to find it more difficult to live equitably with a system of voluntary export restraints because of their more limited negotiating leverage.

The reform of the GATT Code on Subsidies and Countervailing Measures is a particularly high priority for Canada. At the moment, the definition of what constitutes unfair foreign subsidy practices under U.S. trade law is a moving target. There is also a need to put greater discipline on export subsidies and other trade-distorting subsidies. There is a need to provide for better guidelines as to what should not be countervailable. Stronger and more enforceable rules on subsidies and countervailing duties will also require a stronger multilateral surveillance and dispute settlement regime.

Putting appropriate multilateral constraints around the use of a unilateral trade instrument such as U.S. 301 is the key to completing the reform of the GATT dispute settlement system. This will require solid solutions to intellectual property issues and other areas for which no satisfactory GATT rules exist. A stronger and more effective GATT dispute settlement system, particularly in respect of the adoption and implementation of panel reports, will make a major contribution to a more stable framework for the management of trans-Pacific trade relations. The new multilateral mechanism set up in the GATT to monitor and review national trade policy trends and developments will also help to introduce greater transparency in the policies of our Asian partners.

Trade in Services and the Pacific

The prospects that a General Agreement on Trade in Services will emerge from the Uruguay Round are encouraging at this time (mid-1989). Significant progress toward development of a broad multilateral framework was made at the mid-term review of the Uruguay Round in Montreal. This would be a significant contribution to efforts to expand and strengthen the trading system in keeping with the new economic realities.

Not only are services increasingly intertwined with trade in goods, but also they are a major input to modern and efficient operations by resource and manufacturing industries. In looking at the potential role for expanding trade in services across the Pacific, one has simply to think of the importance of information industries in the complex of high technology industries in Japan; the continuing expansion of tourism across the Pacific; the potential demand for management, consulting and engineering services for construction projects in Japan and other Asian countries; and the huge capital markets of Japan, Hong Kong, Korea and Taiwan.

The main question for the Uruguay Round no longer seems to be whether there should be a services trade agreement but whether such an agreement will be a high quality agreement with strong national treatment, non-discrimination, transparency and dispute settlement provisions. A further question is what it will apply to in terms of sectoral coverage, government practices and various factors of production. The question equally is whether the process of progressive trade liberalization will be initiated in this Round by removing some specific impediments to trade or whether the new agreement will apply prospectively to future services transactions. It is to be hoped that many developing countries in the Asia/Pacific will see their way to making a significant contribution to the negotiating process in Geneva and to joining such an arrangement as full partners.

It is interesting to note that, within the Pacific region, we have had two possible models for negotiating services trade in the last two years. I have in mind, of course, the Canada-U.S. Free Trade Agreement and the Australia-New Zealand Closer Economic Relations arrangement.

Conclusions

The Uruguay Round is the gateway to expanding trade and investment opportunities across the Pacific. This region has a great stake in a successful Round. Initiatives to make progress must therefore come from all the major Pacific participants. The time-frame to complete the negotiations by the end of 1990 is tight but the issues are clear. They are those on the agenda of this conference. I hope that your deliberations will bring us closer to possible approaches to strengthening the world's trading system.

Part II

Canada and the Uruguay Round:

Opportunities and Challenges

The Canadian Chemical Industry and the Uruguay Round

G. Firman Bentley
Basic Petrochemicals Division, Polysar Limited

Two and a half years ago, Peter Drucker, the U.S. management guru, wrote in *Foreign Affairs* that economic dynamics have decisively shifted from the national economy to the world economy. This led him to believe that "any national economy that wants to prosper will have to accept that it is the world economy that leads and that domestic economic policies will succeed only if they strengthen, or at least do not impair, the country's international position. A country, industry or company that puts the preservation of blue collar manufacturing jobs ahead of international competitiveness will soon have neither production nor jobs."

The Canadian chemical industry is a strong advocate of Drucker's views as just expressed and as such fights against trade barriers wherever they exist. It was this pursuit that prompted the industry to support the Canada-U.S. free trade negotiations and that accounts for the industry's current involvement in the multilateral trade negotiations.

I have been asked to talk to you about the chemical industry's market access priorities in the Uruguay Round and to offer my views on other developments, such as the move to integrate the European Communities by 1992.

Canadian industry generally, including the chemical industry, stands to benefit from improved and more secure access to foreign markets.

The Canadian Chemical Producers' Association supports an outcome of the Uruguay Round that will

- enhance our access to world markets;

- make such improved access secure over the long term;
- provide adequate opportunities for adjustment through appropriate phase-in periods and adjustment assistance measures;
- be supported by pro-competitive government policies; and
- be fully consistent with the implementation of the Canada-U.S. Free Trade Agreement.

Before getting more specific about our Canadian priorities I would like to describe the process we have been using to advise the negotiators of our interest.

At the beginning of 1989 the Minister for International Trade established a permanent advisory committee system to provide a continuing, confidential two-way flow of information and advice between the government and private sector on international trade matters.

The advisory committee system has two components: the International Trade Advisory Committee (ITAC) has broad terms of reference on all international trade matters, including issues relating to trade policy, market access and trade development. The other component consists of 13 Sectoral Advisory Groups on International Trade (SAGITs), which interact with the government to ensure sectoral views are fully taken into account on international trade matters (See Exhibit 1). I chair one of the SAGITs and also sit on the ITAC.

They are the main channel for communicating the views of the Canadian private sector to the government, and they are very effective. Our contact with the negotiators is frequent, and they are quite responsive to our views.

A similar system is in place in the United States, but there is no comparable system in Europe.

Beyond this domestic system the Canadian chemical industry has formed an informal alliance with the European Chemical Industry Association and the U.S. Chemical Manufacturers Association. Over the past several years experts from each group have met to discuss trade policy issues. In the course of the meetings a spirit of close co-operation and understanding has emerged, which has led to many common opinions on matters of trade policy concerning the industry on both sides of the Atlantic. This close working relationship has enabled us to develop common views on many of the important issues of the Uruguay Round and to present these to our respective negotiators. We are currently in discussions with the Japanese chemical industry to consider expanding our alliance.

Through our existing alliances we have been seeking fair, open and equivalent market access to all world markets. Together we believe this is best achieved by linking tariff and non-tariff measures in such a way that tariff concessions are made only after substantive improvements in non-tariff measures have been negotiated. We also believe

firmly that chemical tariff changes should not be proposed in exchange for concessions in non-chemical sectors.

While we do not want the main emphasis to be on tariff concessions, we believe there is value in moving toward harmonization and binding of tariff rates between all parties.

Perhaps our most difficult task in the tariff area is establishing the procedure to follow. In previous GATT rounds a formula approach to cutting tariffs across the board has been used. This has been effective and practical in its application, but this approach is not supported by the United States in the current Round. Instead they want individual countries to request U.S. tariff reductions and indicate what they are willing to give up in return.

This "request and offer" approach favoured by the United States serves their interests better, but Canada considers it unwieldy. The Canadian chemical industry believes we should rely on a formula to reduce the general level of tariffs, but also make provision for a request and offer negotiation where warranted.

The other difficult task lies in actually measuring real improvement in market access. When tariffs are cut the results are visible and easily quantified—but how do you measure absolute gains in lowering internal taxes, licensing, quantitative restrictions and other import control measures? This is currently the subject of activity at the SAGIT and with the U.S. industry advisory groups.

Our alliance of associations has adopted objectives for the multilateral trade negotiations covering not only tariffs but intellectual property, investment measures, infant industries, dispute settlement, safeguards, subsidies and countervailing duties. The individual associations have then developed their own detailed positions on each of the issues, positions that may or may not be adopted by the others.

In examining the implications of Europe 1992 for the Canadian chemical industry two perspectives must be considered. Canadian-based multinational chemical companies with substantial production facilities in the EC and companies that export products to the EC may be affected quite differently. For Canadian companies with a significant presence in the EC, the impact of 1992 should be virtually the same as for their European counterparts.

Opportunities for rationalization of production and increased efficiencies should result, and the industry's customers should benefit from higher rates of growth in the European economy.

Changes that will affect the way we do business will include:

- **Border crossings**. As a large user of international trucking, Polysar makes dozens of border crossings a day. Eliminating frontier formalities should reduce the cost of international transport by 5 to 7 per cent.

- **Telecommunications**. Most European communication systems are now state monopolies with no cross-border competition and many inefficiencies; prices vary by factors of 6 or 8 for the same services. The EC will open the telecom-

munications market to competition and ensure common standards (frequency levels, for example, for cellular telephones across Europe). Among other benefits, we will be able to communicate better and at lower cost with customers among other benefits.

- **Accounting**. Improved telecommunications and standardized information systems should limit rehandling and recording of data crossing borders. This should save time, reduce costs and allow our company to choose effectively between centralized and dispersed invoicing.

- **Law**. Considerable legislation on waste management, hydrocarbon emissions and health and safety issues is expected to have significant implications for the chemical industry.

- **Tax**. It is expected, and the business community hopes, that corporate tax law will be harmonized downward, not upward, across EC members.

Europe 1992 also encompasses the goal of a freer energy market, which could in some instance be of great value to downstream chemical producers in terms of reduced costs and improved supply access.

From the perspective of Canadian chemical exporters, the promise of a revitalized EC market can be realized fully only if North American firms are allowed to participate on an equal footing with their EC competitors.

The area of technical standards is of particular concern. Products not manufactured and marketed in the EC will have to meet standards of entry. Canadian firms will have to identify the country with the best technical environment for a given product and use that country as the base for all EC sales in order to take full advantage of the benefits of mutual recognition.

EC recognition of other national certification procedures and those of neutral international organizations is important to assure non-discriminatory treatment.

The Canadian chemical industry agrees with the underlying principles and basic objectives of the single European Act. As the Europe 1992 process is currently viewed, there is nothing that either singles out the chemical industry for special treatment or discriminates overtly in any way against non-EC business.

Our company, like many others, is testing the way we operate in Europe to ensure we are ready for the massive changes that are coming. Both the Canadian and the U.S. government can be very helpful as we proceed along this path. For example, under the ITAC structure there is a task force devoted to Canada-Europe trade relations, with particular interest in Europe 1992.

In closing, let me recall Drucker's comments:

> Any national economy that wants to prosper will have to accept that it is the world economy that leads and that domestic economic policies will succeed

only if they strengthen, or at least do not impair, the country's international position.

For a country as dependent on trade as Canada is, and given the reality of the U.S. omnibus trade bill of 1988, the FTA, the MTN round, the U.S. Super 301 and the Europe 1992 movement, we cannot ignore this advice.

Exhibit 1

Minister for International Trade
ITAC
13 SAGITS
Task Force IV
The European Community and Canada
Task Force V
The USA and Canada
– unresolved issues
energy, chemicals & petrochemicals

Canada in the Uruguay Round: A Metals and Minerals Perspective

Klaus E. Goeckmann
Cominco Ltd.

To set the stage for my comments, I would like to tell you a little about the state of our industry today. Canada's mineral and metal industries have experienced an exciting two years. Canada continues to rank high among producing countries in uranium, zinc, potash, nickel, aluminum and copper, to name just a few.

Following the restructuring and rationalization required during the global recession period of 1981 through 1985, our industry is now able to capitalize on the significant rise in metal prices and the increased value of our outputs. The industry is now in a strong position after a sustained period of higher prices and the efficiencies achieved as a result of rationalization. The price recoveries, which began in 1986, are expected to continue well into this year. As a result, industry profitability and cash flows have made a significant turnaround, allowing companies to invest more money in exploration, mine development, and further processing and thus securing the future of the Canadian industry.

This much-needed recovery has enhanced the livelihood of the more than 100,000 Canadians employed in mines, smelters and refineries across Canada. Despite continuing intense international competition, the future for the Canadian mineral industry looks positive through the balance of this decade if we are successful in holding a position at the lower end of the cost curve.

Now to the subject—the multilateral trade negotiations and the Uruguay Round. I will attempt to limit my remarks to the philosophy and issues of the overall industry; but where appropriate, I will speak on some minor differences of opinion within certain mineral or metal sectors or regions of Canada.

Overall, the Canadian industry is in favour of a more open world trading environment—this is evidenced by the industry's unqualified support for the Canada-U.S. Free Trade Agreement. In simple terms, our industry depends on trade of minerals and metals for its existence. The unimpeded flow of goods, both imports and exports, is crucial to our industry's long-term survival and will contribute in a major way to enhancing an already highly productive sector of the Canadian economy.

It is therefore a principal industry objective that Canada must seek to achieve the deepest possible tariff reductions while minimizing the negative effects on Canada's domestic industry.

The multilateral trade negotiations are particularly important to the resource industries of the province of British Columbia, because more than 50 per cent of our total exports are destined for markets other than the United States. We are, as an industry, less dependent on the market south of the border and more dependent on Pacific Rim markets for growth. Therefore, the importance of unimpeded access to Pacific and other export markets can not be over-emphasized.

The Canadian mineral industry subscribes to the fundamental principles of the Uruguay Round being threatened by growing protectionism in the international trading environment. The principles are:

- that the negotiations be as thorough and comprehensive as possible;
- that the accords concluded be transparent, rule-based and enforceable; and
- that the jurisdictional and policy interdependence of the provinces of Canada be preserved in terms of regional resource management and development.

Of specific interest and issue to our industry is the broad concept of market access, which should be interpreted as market opportunity and challenges, the subject of this morning's panel.

Market access for us, and I am fairly safe in including all Canadian commodity and manufacturing sectors, covers both tariff and non-tariff barrier issues.

While ores and concentrates—the first outputs of mining—do not face tariffs or non-tariff barriers in most developed or newly industrialized economies, tariffs are applied and can escalate dramatically with the level of added-value processing, effectively limiting opportunities for processing in Canada. To cite a few examples:

- Copper concentrate and scrap enter the United States, the European Community, and Japan duty-free, whereas anodes and refined cathodes draw levies. Semi-fabricated bars and rods, wire, tubes and pipe attract even higher tariffs.
- The well documented, albeit changing tariff situation for unwrought zinc and zinc alloys (1.5 per cent versus 19 per cent ad valorem) in the United States is a prominent example of escalation.

- In Japan, nickel ores, matte and scrap enter duty-free, whereas unwrought nickel attracts a duty of 11.7 per cent.

Coupled with tariff escalation are some excessive tariff rates on basic globally traded industrial metals that represent an unwarranted subsidy to domestic producers. A few examples that distort trade inordinately are these:

- Argentina's tariff on refined zinc is 38 per cent.
- Brazil charges 30 per cent on zinc and 15 per cent or more on nickel.
- Thailand, to protect its growing industry, levies a 20 per cent duty on both lead and zinc.

Specialty metals and other highly processed metal forms are affected by even higher rates.

How might this be interpreted with respect to Canada's base metal industry? We believe that our industry—with its broad resource base, excellent technology (invented here), and access to abundant energy (if reasonably priced)—has a natural exploitable added-value processing advantage of benefit to the world. We are a very significant producer of mined primary base metals: about 1.5 million tonnes of zinc, 800,000 tonnes of copper and 400,000 tonnes of lead annually. We have smelters and refineries to process these outputs further; yet a full 45 per cent of each (that is, 600,000 tonnes of zinc, 350,000 tonnes of copper and about 160,000 tonnes of lead) leaves Canada each year untreated, bound for Western Europe, Japan and other Asian markets because they enter these regions duty-free—where refined metals do not.

If and when even some of these tariff barriers are removed through multilateral trade negotiations, Canada will have greater opportunities for value-added manufacturing and wealth creation here at home. There are, however, other global trade-distorting practices.

- **Discriminatory practices**. Some countries apply tariffs unevenly, depending on the country of origin. For example, Indonesia charges 3 + per cent on lead and zinc imports from ASEAN countries, compared to 5 per cent for others. These practices openly discriminate against Canadian suppliers.

  All of the aforementioned practices must be addressed if the multilateral trade negotiations are to be "thorough and comprehensive", but they will be effective only if agreements concluded are "transparent, rule-based and enforceable".

- A variety of **non-tariff measures** also distort the world of commercial metal trade; they include (to identify only a few) government procurement practices, quotas, technical barriers and standards, and enforced counter-trade practices.

  Several countries restrict metal imports to quantities just sufficient to meet consumption after domestic production is satisfied. This tends to raise metal prices in that country, which not only distorts metal trade but also distorts concentrate trading by strengthening the domestic producers' ability to bid for

concentrates. These are general practices in Japan (a fact I will speak to later), China and other Asian countries, the Eastern Bloc and South America.

- **Import licensing** may constitute a barrier if granting processes are lengthy, tying up materials and revenues. **Foreign flag** vessel restrictions are practiced by many nations as well. Enforced use of domestic vessels often imposes higher than globally competitive shipping costs.

  A vivid example of this practice is the U.S. Jones Act restrictions, which require that U.S. intercoastal trade (for instance between Alaska and the lower 48 states) be accommodated only on U.S. flag ships. Our company, which was developing a new resource in northwest Alaska, found the use of U.S. vessels totally prohibitive (almost three times as costly) for moving concentrates to Seattle, Washington, as compared to using free flag vessels to the port of Vancouver from Alaska. This U.S. shipping subsidy shuts out major trade opportunities for the U.S. mining industry.

- **Currency and foreign exchange restrictions can distort, as can enforced counter-trade** requirements with some countries. Can you imagine the complexities involved if you wish to market a ton of zinc but must accept rubber or agricultural products as counter-trade payment for it? Indonesia, for example, used to force upon importers the obligation to take such products as plywood and rubber boots in trade.

The eventual conclusion of the MTN has the potential to develop new or alternative mechanisms to speed the resolution of these trade-distorting commercial practices.

As one might expect from an industry as diverse as ours is in Canada, with minerals from A (aluminum and asbestos) to Z (zinc), there will likely never be complete consensus with the principles of the GATT and MTN. National policy may dictate, but sectors of industry may differ in fundamental business philosophy. A case in point that requires at least limited comment are the differences of purpose and opinion in our domestic copper industry.

Copper is mined in various regions of Canada, but refined metal is produced only in central Canada. A large and now very successful mining industry resides here in British Columbia. Ours is a significant sector of the B.C. economy that was encouraged and developed almost solely to provide metal concentrates for the smelters and refineries of our major trading partner—Japan. Our copper output is valued highly in Japan, and because of this historical complementary arrangement our concentrate trade is protected somewhat by the concentrate purchasing practices of Japanese smelters. Because of this, the trade issues for Canada's copper industry do vary from east to west. But I emphasis that the historical beneficial relationship between the Japanese copper smelters and B.C. mines should not be disrupted. Ultimately, this is in Canada's best interests in support of the vital export trade component of the economy.

I would be remiss if I did not address the issue of Europe 1992 and how this event may affect Canada's minerals and metals industry. Canada's mineral and metal exports to the European Community in 1988 exceeded $3 billion; imports from EC members were

$1.8 billion. This demonstrates a very positive sectoral balance of mineral and metal trade and is of course vital to industry and to Canada. The commodities involved again range from asbestos to zinc.

I must add that although Canada/EC trade is significant to us here in Canada, we are not a major factor in overall EC import dependency. We are important in commodities such as asbestos and nickel; and lead and zinc (the latter two are key to my organization), but not overall. Cominco's Polaris Mine—the most northerly metal mine in the western world is wholly dependent on European markets for its output of zinc and lead.

Generally, our industry acknowledges that Europe 1992 will be important for Canadian firms dealing with Europeans, but it is not expected significantly to alter present preferred trade and investment patterns in minerals and metals. On balance, completion of the internal Community market should generate a more competitive business environment. One can only hope that this evolutionary process will foster co-operation and more transparent trade negotiations with member states.

Before summing up, let us look briefly at the potential effect of the Canada-U.S. Free Trade Agreement with respect to Pacific region.

With ratification of the FTA, benefits should accrue to the Canadian mineral industry that will enhance Pacific trade. Canada expects significant increases in its industries' competitiveness, centering on further value-added processing, specialization and North American industrial rationalization. The FTA will provide an open, more predictable and stable trading environment.

The Agreement will have more significant effects on mineral and metal processing than on primary mining. Removal of trade biases will provide opportunities for processing prior to export and potentially more research and development in mineral processing.

Elimination of tariffs by both countries should allow for greater production specialization and the economies of larger production runs. New market opportunities can translate directly into investment in new operations and expansion of existing plants.

Canadian exporters absorb low tariffs as part of their sales costs when competing in foreign markets; these costs will disappear between the United States and Canada, resulting in improved profitability. And bilateral tariff elimination will put North American producers on an equal footing with Third World exporters who enjoy duty-free access to the United States.

Conclusion

My remarks are a compendium of comments drawn from the Canadian mining industry. While we as an industry do not always speak with a common voice, there is consensus that world trade barriers of all kinds should be reduced or eliminated. In no single case

does the mineral sector call for protection of its Canadian production base through the maintenance of tariffs or non-tariff barriers.

The pattern of Canada's trade in minerals and metals in the Pacific is heavily weighted to unprocessed materials. In sharp contrast, Canada's trade with the United States shows a more even distribution across all products. Clearly, we envisage as a benefit of the FTA an improvement of Canada's international competitiveness in processed products. The initial benefits should occur gradually in North America, and there is little likelihood of major or immediate trade diversionary effects in the minerals and metals sector as a result of the Free Trade Agreement, either within North America or with Canada's trading partners in the Pacific Rim.

We would expect that over the next decade, as Canada's competitive position in processed minerals and metals improves, our Pacific trade would shift gradually toward more finished products. The extent to which this shift can be achieved will hinge in large part on the outcome of the Uruguay Round of GATT. This is one reason why there is great industry enthusiasm for realizing the potential of the current round of multilateral trade negotiations and strong support for the Canadian negotiating position.

Market Access Priorities in the Uruguay Round

Lorne Seitz
Ministry of International Business and Immigration
B.C. Government

British Columbia, perhaps more than any other Canadian province, has a particularly strong interest in a successful conclusion to the Uruguay Round of multilateral trade negotiations. More than 26 per cent of British Columbia's total provincial GDP was accounted for by exports of goods in 1988. (No reliable figures for service sector exports exist at this time.)

At least one British Columbia job in seven depends on international trade. In 1988, British Columbia exports totalled more than $17.4 billion (up by 11 per cent from the 1987 total of $15.7 billion). However, as shown in the accompanying table, less than half of British Columbia's total 1988 exports went to the United States (versus 73 per cent for Canada as a whole).

	Percentage of Exports to Each Destination, 1988	
Destination	British Columbia % of Total	Canada % of Total
United States	43	73
Japan	27	6
European Community	14	8
Pacific Rim (excluding Japan)	11	6

British Columbia, therefore, has a relatively greater interest than Canada as a whole does in resolving its non-U.S. market access issues.

British Columbia's major Pacific Rim export markets are Japan, which ranks second among our export destinations, Korea (fifth), Taiwan (sixth), Australia (eighth), China (ninth), Hong Kong (thirteenth), and the ASEAN countries, each of which ranks among the top 30.

The importance of the Pacific Rim to British Columbia's MTN focus cannot be overstated. In fact, in the first quarter of 1989, the Pacific Rim (including Japan) pushed ahead of the United States as British Columbia's major export destination. Despite the export growth we have experienced, British Columbia exports face significant market access barriers in almost all these countries (with the notable exceptions of Hong Kong and Singapore).

British Columbia's MTN geographic focus might best be characterized as three-pronged:

1. the United States (primarily residual issues)
2. the Pacific Rim (the full range of issues)
3. Western Europe (the full range of issues)

To the extent that we have addressed most of our U.S. market access problems with the Canada-U.S. Free Trade Agreement, the bulk of British Columbia's focus in the MTN will fall on the Pacific Rim and Western Europe (the European Community in particular).

British Columbia has used a variety of mechanisms to help it formulate its negotiating positions and objectives for the Uruguay Round. Two of the most important mechanisms have been:

1. the Ministry of International Business and Immigration's extensive private sectors consultations on the MTN, which took place in the fall of 1988 and involved more than 200 British Columbia companies.
2. the co-operative work program laid out by the western ministers responsible for trade negotiations (and about which my minister and the chairman of that group, the Honourable John Jansen, will have more to say later in the program).

In addition, there is a well developed process of federal-provincial consultations in place for the MTN and an extensive exchange of information on the progress of the negotiations between the two levels of government.

What, then, are some of the Pacific Rim negotiating objectives identified by British Columbia for the Uruguay Round? To answer part of that question, I would like to draw upon the Ministry's December 1988 report on the private sector consultations.

First, by way of a general comment, I should note that the private sector in British Columbia has largely identified tariff barriers as the major impediments of concern in the newly industrializing economies (NIEs) of the Pacific Rim, whereas non-tariff barriers

have emerged as the major impediments of concern in the developed economies of Western Europe. In the case of Japan, however, we still have a large number of tariff barriers to address (e.g., spruce-pine-fir lumber tariffs at 8 per cent, compared to 0 per cent for kiln-dried hemlock).

As far as tariff barriers are concerned, one of the major frustrations identified by British Columbia exporters has been the question of tariff escalation (whereby tariff rates rise according to the amount of processing or value-added prior to export, thus preserving processing jobs in the importing country). This means that the province's efforts to increase the amount of value-added processing done prior to the export of its natural resources are being frustrated. Accordingly, one of our major objectives in the Uruguay Round is to negotiate tariffs down to as low a level as we can get them and, in particular, to eliminate the incidence of tariff escalation.

Specific Pacific Rim tariff barriers identified by the British Columbia private sector include the following:

1. Korea's 22.5 per cent tariff on **molybdic oxide** (as compared to its 3.5 per cent tariff on the lower value-added form of molybdenum disulphide).
2. Japan's 5 per cent tariff on **molybdenum catalysts**.
3. India's very high tariffs on concrete **sealants**, **chemicals**, and **paints**.
4. Australia's tariffs on **machinery** and **equipment**, which exceed 20 per cent in some sectors of interest to British Columbia.

Not surprisingly, some of the most detailed tariff demands have come from British Columbia's forest sector. Among the major Pacific Rim tariff barriers identified by the forest sector are these:

1. Japan's 8 per cent tariff on **spruce, pine and fir dressed lumber** (as opposed to its 0 per cent tariff on kiln-dried hemlock).
2. Japan's 15 per cent tariff on **laminated lumber**, and **builders' joinery**, as well as its 10 per cent tariff on **softwood plywood**.
3. Korea's 15 per cent tariff on **softwood lumber** and its 20 per cent tariff on **softwood plywood, laminated lumber**, and **builders' joinery**.
4. India's 55 to 100 per cent tariffs on **rough and dressed softwood lumber**.
5. Australia's 15 per cent tariff on dressed **softwood lumber** and **builders' joinery**. In addition, Australia levies a 25 per cent tariff on Canadian **softwood plywood**.
6. New Zealand's 25 per cent tariff on **softwood plywood**.

It is conservatively estimated (by the Council of Forest Industries of British Columbia) that the elimination of these Pacific Rim tariff barriers alone could add $650

million to British Columbia's total softwood lumber and plywood exports, which to all markets amounted to more than $3.9 billion in 1988.

As far as non-tariff barriers are concerned, the private sector in British Columbia has identified product standards (e.g., evolving European Community standards for plywood); import quotas (e.g., European Community tariff rate quota on softwood plywood); preferential market access arrangements; and a lack of intellectual property protection (e.g., inadequate protection for software, sound recordings, film, videos and books in South East Asia, particularly Indonesia and Thailand) as its major impediments of concern.

Interestingly enough, very few of our companies have raised the issue of barriers that inhibit the movement of British Columbia-based personnel into non-U.S. export markets. This stands in sharp contrast to the difficulties faced by British Columbia service personnel attempting to access the U.S. market in the days prior to the FTA. What is not clear, however, is whether this finding reflects genuinely freer access to these markets, or just the smaller experience base of British Columbia exporters in non-U.S. markets. Certainly, as we move to increase the export of manufactured end products (particularly machinery and equipment) from British Columbia to the Pacific Rim, we should anticipate an increased flow of service and support personnel to these markets as well. At that point, we shall see whether this freedom of access is real or imagined.

As far as Pacific Rim non-tariff barriers are concerned, the private sector has brought the following to our attention:

1. **Japanese building code restrictions** on the use of wood in certain three-storey multiple family dwellings such as apartment blocks (primarily for fire/earthquake safety reasons that we consider questionable).

2. **Indian shipping restrictions** requiring imports to be carried in Indian vessels.

3. **Australian phytosanitary standards** on certain agricultural and fisheries products (e.g., a prohibition on frozen salmon imports).

4. **Korea's sole purchasing agency arrangement** for sodium chlorate (which effectively gives that agency a monopoly position).

5. **Local content requirements** on major engineering contracts in the less developed countries of the Pacific Rim.

More generally, many British Columbia exporters have urged the elimination of the preferential tariff access accorded to such highly developed NIEs as Korea, Singapore, and Hong Kong. While no one is objecting to the legitimate extension of such preferential tariff access to genuinely needy developing countries (particularly those *least* developed countries with a per capita income of less than US $500), there is a strong groundswell of opinion building in favour of 'graduating' the more economically successful of the NIEs to an MFN tariff status.

Finally, I would like to point out that the success of these negotiations is by no means assured, despite the progress made thus far. The issues surrounding agriculture,

services, intellectual property, investment, subsidies, and textiles and clothing all have the potential to derail the negotiations. Therefore, any forum such as this, which gets the word out about the MTN, which raises the level of knowledge about the issues under discussion, and which helps governments and the private sector focus their MTN objectives more clearly, is highly worthwhile and deserving of our support.

Part III

Perspectives on Global Trade

Pacific Trade and Economic Development

The Honourable John Crosbie, PC, QC, MP
Minister for International Trade

Earlier today, Germain Denis, Assistant Deputy Minister, Office for Multilateral Trade Negotiations, offered a Canadian perspective on the Pacific in the Uruguay Round of multilateral negotiations. I do not wish to plough over furrowed ground. Rather, I felt it might be useful to place Canada's Pacific strategy in a broader context, so you can understand our national aims and aspirations.

Sitting here in central Vancouver, it is easy to forget that Canada is a relatively new entrant into the ranks of industrialized countries, with much of our development occurring only the past four decades. Indeed, we are a mere pup in the time frame of Asian history. And our national character is still evolving with continuing immigration and urbanization. We are not the country we were even 20 years ago.

That national character has been shaped by geography, history and economic forces:

- Despite the percentage of Canadians who live in cities close to the U.S. border, our national mythology has been shaped in great part by our harsh northern climate and vast open space.
- Economics has caused ever-growing links with our southern neighbours.
- History has caused us to look back across the North Atlantic for our traditions and institutions.

In sum, north for mythology, south for commerce, east for our traditions. Rarely have we looked west beyond our shores.

While we have been a nation from sea to sea for more than a century, we have never truly turned our minds to the Pacific.

To most Canadians, Vancouver has represented the end of the line, far from the original Canada of Ontario and Quebec. And Asia was the far east, reflecting a European perspective that one had to round the Cape of Good Hope in search of silk and spices.

Our fundamental challenge, as we approach the twenty-first century, is to change the way Canadians see the world and ourselves.

In a very real way, it is to help Canadians see this city not as the end of the line, but as the beginning; not as a point of departure, but the port of entry into the Pacific domain; not as our far western edge over the Rockies, but our far eastern centre on the Pacific Rim.

Our plan to help Canadians adjust to the realities of the twenty-first century starts with a commitment to the multilateral trading system. As a middle power with a small domestic market, it is absolutely critical that we support the goal of an open world economy based on respect for the rule of law in multilateral trade.

We view the General Agreement on Tariffs and Trade as the door to development through trade—as the critical link between the three mega-economies of North America, Asia/Pacific and the European Community.

I recognize that such a commitment to multilateralism might sound contradictory in light of our bilateral Free Trade Agreement with the United States. But there is no contradiction, for the FTA is an agreement linked tactically, strategically, substantively and psychologically to our objective of a more open world economy.

As a matter of tactics, the Agreement helped prevent a rise in damaging protectionism between Canada and the United States. And we believe it strengthened our negotiating position in the Uruguay Round of multilateral negotiations.

Strategically, the agreement secured better access to a world-scale market—a decisive response to Canada's age-old problem of market size. It lowers barriers to trade in value-added products and services—barriers that have long been obstacles to our development as a value-added economy. And in lowering these barriers, it increased our attractiveness as a location for world-scale manufacturing facilities—a gateway to the North American market for Asian and European manufacturers.

Substantively, the Agreement is based firmly on the concepts and principles of the GATT—in technical standards, procurement, export and import restrictions and elsewhere.

But perhaps most important, the Canada-U.S. Free Trade Agreement is a psychological watershed in our nation's history. It signals a new, outward-looking and more confident Canada.

Far from signifying a retrenchment of Canada into a Fortress North America mentality, this bilateral agreement is truly a stepping stone for our producers to offshore

leads me to a third action—our trade development strategy to seize the opportunities of freer global trade.

We call it our three-pillar strategy—geared to the mega-economies of the United States, the European Community and Asia/Pacific.

In other forums recently I have outlined our approach to the 1992 initiative of the European Community and our U.S. export development plan. Today, I would like to focus on our Pacific front.

As Prime Minister Mulroney declared during the 1988 election campaign, we intend to implement a Pacific 2000 initiative to ensure Canada is front and centre in the dynamic theatre of the Pacific Rim.

Today, the volume of trans-Pacific trade between Asia and North America exceeds $300 billion a year. By the turn of the century, that trade will likely exceed $500 billion. By that time, Pacific Asia will contain 60 per cent of humanity, 50 per cent of global production and 40 per cent of global consumption. Clearly, it is high time that Canada developed our own Pacific personality, and we intend to do just that.

- We will be strengthening our scientific and technological base through active partnerships.
- We will be promoting a greater awareness of Asian countries in Canada by encouraging cultural and language studies—awareness of Japan and the other nations that are part of the rich diversity of the Asia/Pacific region.
- We intend to promote a greater awareness of Canada in the Asia/Pacific region, by supporting exchanges and Canadian studies programs.
- We will be pursuing an aggressive regional trade strategy, identifying specific market opportunities in Japan, the four tigers (as they are called) India and elsewhere, and mounting promotional drives to translate those opportunities into exports.

But our Pacific personality goes beyond trade and investment. It is also about people. Fully 50 per cent of our immigration now comes from Asia/Pacific. By the year 2000, there will be one million more Canadians of Asian origin—a major force in our multicultural fabric and a solid link across the Pacific.

I have been focusing on Canada's continuing transformation into a global trader and a growing Pacific presence. But we also understand that the nations of Asia/Pacific are undergoing equally dramatic, if not even greater, change. In fact, I would suggest it is in the changes taking place on both sides of the Pacific that our full potential lies. It is through trade liberalization in sectors such as food products that we can develop a mutually beneficial trans-Pacific relationship based on comparative advantage.

Recent actions have shown that other trading partners, such as the United States, may exhibit impatience as they exert pressure to open Asian markets more fully and

markets. It increases out ability to seize the opportunities in freer trade around the world—to participate in global developments from a position of strength.

Now, during our government's second mandate, we intend to build on that initiative by promoting a global orientation for our traders.

One action symbolizing that global thrust is our decision to change the working name of Canada's Department of External Affairs. Henceforth, the Department will be called External Affairs and International Trade Canada. We will be launching a corporate identity program during October 1989—our export month. The reasons for this change are twofold: first, to remind Canadians constantly of the importance of international economic relations in the conduct of our foreign policy; and second, to ensure our exporters understand who and where to call in Ottawa for export assistance.

A second action will be our constant and continuing focus on the Uruguay Round of Multilateral Trade Negotiations. Indeed, we believe it is no exaggeration to state that the continued health of the world economy depends on the progress we make in the current Uruguay Round.

Consider, for example, the link between agricultural trade reform and international finance reform, a link being pursued by the many Asia/Pacific nations in the Cairns Group. One of the benefits of agricultural reform would be higher returns to the less developed countries (LDCs) for their exports, thereby easing their debt burden. But a second benefit would be lower budgetary deficits in North America through the lowering of wasteful subsidies. That, in turn, would surely have a beneficial impact on interest rates, which would ease the debt servicing costs of the LDCs even further. Combine meaningful progress on trade with a credible U.S. fiscal policy, and one has the foundation for growth into the 1990s.

If agriculture is one critical issue, another is the need for disciplines on national trade laws governing alleged subsidies and dumping—laws that when abused, threaten to undo much of the benefit of past tariff reductions. For our part, we have done a great deal of work on this subject, and I am pleased to be able to release our multilateral position today. Our primary objectives in this areas are as follows:

- to seek improved disciplines on subsidy practices;
- to add greater precision to rules and procedures;
- to obtain clear multilateral understanding on acceptable government programs that are non-trade distorting; and
- to establish a better dispute settlement process.

It is my hope that other nations will find Canada's position compelling, in terms of both logic and practical effect.

Thus, one Canadian action will be the creation of External Affairs and International Trade Canada, while a second will be a continuing focus on the Uruguay Round. That

more quickly. We understand and support their objectives. We do not support their methods.

Rather, we believe the answer to current trans-Pacific problems lies in multilateral and regional co-operation—not bilateral confrontation; and that is why we are extremely interested in supporting the development of a Pacific Rim Forum and wholeheartedly support Australian Prime Minister Hawke's call for a ministerial meeting later this year.

We see this initial meeting as an opportunity to enhance the sense of community and common purpose among nations of the region. We see it as the beginning of a process of identifying, first, how we can work together to sustain growth, and second, where collaboration and co-operation might be most beneficial, for instance in resource management, transportation or telecommunications.

We hope that a Pacific ministerial forum might stimulate policy-oriented research in the region, and that organizations like the Pacific Economic Cooperation Council could help channel data and analysis to where it is needed. We would look to the Forum to impart political energy to the fostering of business linkages, with a potentially key role for the Pacific Basin Economic Council.

Should the dialogue be restricted to economics and trade? We think that the agenda of co-operation, by its nature, is a broad one. And we see no reason why the topics covered by Pacific ministerial meetings could not eventually be extended to other areas, such as the environment.

In approaching the ideal of regional co-operation, I believe we should remember the unique qualities of past regional co-operation—our success in mobilizing private sector and academic involvement.

We should build on this success—and avoid building a big and expensive bureaucracy—by using what we have already. I am thinking, for example, of the Pacific Economic Cooperation Conference (PECC).

While matters of policy will obviously remain within the purview of governments, recent moves in PECC to acquire a small, permanent staff and to sharpen the focus of its work programs suggest that PECC might contribute analytical support to the process of regional co-operation. It is something that should be explored.

In summary, that is Canada's Pacific trade strategy for the 1990s, and beyond:

- a recognition that international economic relations are a key factor in our foreign policy;
- a firm commitment to multilateral trade and the rule of law as the door to opportunity for Canada and for all nations;
- using the bilateral Free Trade Agreement with the United States to strengthen our ability to compete in the Pacific arena;
- a Pacific 2000 strategy to develop our Pacific personality; and

- full-fledged support for Pacific regional co-operation.

We believe it is a coherent and realistic strategy that reflects Canada's needs and aspirations as an export-oriented middle power bordered by the Pacific and the Atlantic and situated north of the world's largest consumer market. It is our hope that, through this strategy, we can take our rightful place among the nations of the Pacific and ensure that all countries of the region can prosper in peace into the twenty-first century.

British Columbia's and Western Canada's Preparation for the Uruguay Round of Multilateral Trade Negotiations (MTN)

The Honourable John Jansen
Minister of International Business and Immigration, B.C. Government

It is a pleasure to be able to speak to you today about what we in British Columbia and Western Canada have been doing to prepare for the Uruguay Round of Multilateral Trade Negotiations (MTN).

Since my ministry was established, a little less than a year ago, we have been inundated by a great wave of GATT trade actions involving British Columbia and dealing with:

1. alcoholic beverages (European community);
2. salmon and herring (United States);
3. spruce, pine, and fir lumber tariffs (Japan); and
4. ice cream and yoghurt (United States).

My introduction to the GATT, therefore, might best be described as a baptism by fire. There was not the time to make a careful and reflective study of the history and evolution of the GATT. Instead, we were thrown into the midst of one of GATT's most contentious areas—the dispute settlement mechanism.

Further complicating matters was the fact that we were half-way through one of the most ambitious and comprehensive rounds of multilateral trade negotiations ever undertaken since the GATT was founded some 40 years ago.

To become knowledgeable on the GATT as quickly as possible, and to gain a better understanding of the complex issues under negotiation in the Uruguay Round, I

undertook a trip, early in my tenure as Minister of International Business and Immigration, to the GATT in September 1988.

In Geneva, I met with the Canadian mission, with officials from the GATT Secretariat, and with officials from the delegations of the United States, the European community, Japan, and the ASEAN countries.

I came away from these meetings with a much better appreciation of the difficult task that lay ahead of us in western Canada. Accordingly, when I returned to British Columbia, I initiated a broad-based series of private sector consultations on the MTN. To help orient the British Columbia private sector to the issues under discussion in Geneva, everyone invited to participate in the consultations received a brief summary entitled "The Uruguay Round of MTN: A British Columbia Perspective". The document was well accepted, and more than 200 British Columbia companies and associations met with ministry officials during the fall of 1988.

The purpose in initiating private sector consultations was basically twofold:

1. to gather specific data on foreign market access barriers that may be frustrating the expansion of British Columbia exports, and

2. to establish a communications link with key private sector trade organizations interested in the Uruguay Round.

Following the consultations in early December 1988, we issued a report on the results, giving the report wide circulation within the Province. We also dispatched a copy to the federal government for use in formulating Canada's negotiating position.

In launching the consultations process, we were trying to encourage greater private sector interest in the Uruguay Round. We needed to raise the level of awareness about the MTN among British Columbia businesses for several reasons:

1. As the consultations showed clearly, the level of knowledge about the Uruguay Round was not high (with the possible exception of the forest industry).

2. The private sector should be our primary source of information on foreign market access barriers. They are on the front lines trying to sell their goods and services in the international marketplace.

3. We wanted to ensure the private sector understands the fact that the GATT is not an esoteric abstract lying off in the distance. On the contrary, it is a dynamic contract, and an evolving contract among the world's major trading partners. As such it frequently has an impact on the way we do business in British Columbia.

As part of our research we concluded that B.C. businesses sometimes fail to take into account the international dimension in their business planning. As a result, when international trade actions hit, they are often perceived as coming out of nowhere, when in fact, the storm clouds have usually been gathering for some time.

If I leave only one message with the British Columbia business community, it is this: Think about the international dimension when you are planning your firm's business future. Think specifically about the GATT. Think about the Canada-U.S. Free Trade Agreement. Think about whether you are susceptible to foreign competition. Think about whether you have an export-ready product or service. Re-examine your place in the global marketplace, not just in the local economy.

If you are among the few who are not affected by these international factors, so be it. Go about your business in the usual manner, secure in the knowledge that you have at least made an effort to understand these external forces. On the other hand, if you believe your firm will be affected by these changes and you are having trouble sorting out the potential implications, then come in and see us. Our trade policy staff is ready to help you work through the implications of either the GATT or the FTA. In fact, we have just established a toll-free FTA hotline to help answer free trade-related business questions.

Alternatively, if you have a question about the export potential of your firm's products or services, talk to the staff of our newly established British Columbia Trade Development Corporation (BCTDC). We call it B.C. Trade and it is now up and running. The president is Mr. Lorne Seitz, and I am chairman of the Board of Directors.

The priorities of the newly established British Columbia Trade Development Corporation (known as B.C. Trade) are:

1. in the marketing division, to work closely with British Columbia companies and associations to develop effective marketing strategies and encourage further expansion of British Columbia exports.

2. in the export advisory services division, to work on improving the international competitiveness of existing and potential exporters as well as to deliver the corporation's pre-shipment export financing guarantee program; and

3. in the training and information division, to deliver information of international business opportunities and to help improve both basic and international business skills.

Let me move now to what the western Canadian provinces have been doing to prepare for the Uruguay Round.

First, I want to point out that exports account for almost one-quarter (22.9 per cent) of western Canada's gross domestic product (GDP). In addition, almost half (48 per cent) of western Canadian exports go to markets other than the United States. In the case of British Columbia, for example, our exports to the Pacific Rim now exceed our exports to the United States. In the first quarter of 1989, 41 per cent of our exports went to the Pacific Rim, compared to 39.8 per cent to the United States. Therefore, perhaps more than the rest of Canada, the four western provinces have an interest in addressing a host of market access issues with our non-U.S. trading partners.

More important, exports now account for a significant number of jobs in western Canada:

- in British Columbia, one job in seven depends on exports.
- in Alberta, one job in five is dependent on exports.
- in Saskatchewan, the comparable figure is one job in four.
- in Manitoba, the figure is one job in eight.

With respect to the Pacific Rim, western Canadian exports to Japan now account for 16 per cent of total western Canadian exports (in the case of British Columbia, this figure is closer to 30 per cent). The four western provinces account for almost three-quarters of Canada's total exports to Japan, a percentage that is more or less consistent with western Canada's share of Canadian exports throughout the Pacific Basin. It is not surprising, therefore, that the four western provinces have a keen interest in the implications of the Uruguay Round for our trade relations in the Pacific Rim.

Recognizing this growing dependence on international trade (and particularly on the dynamic Asia/Pacific region), the four western premiers decided in May 1988 to establish a working group of western ministers responsible for multilateral trade negotiations to "develop common western positions on issues of mutual concern" in the Uruguay Round.

As chairman of the western provinces' MTN working group, I was joined by the Honourable James D. Horsman, Alberta Minister of Federal and Intergovernmental Affairs; the Honourable Robert Andrew, Saskatchewan Minister of Trade and Investment; and the Honourable James A. Ernst, Manitoba Minister of Industry, Trade and Tourism.

This far, we have prepared and forwarded to the federal government four joint western Canadian position papers on the following high-priority issued:

1. natural resource-based products,
2. the functioning of the GATT system,
3. the concept of an aggregate measure, and
4. early relief measures for agriculture.

In addition, eight medium-priority papers are being prepared on

1. subsidies and countervail (improved trade rules),
2. the impact of the MTN on the diversification of western Canada,
3. trade in services,
4. grains and oilseeds,
5. livestock,

6. horticulture,

7. consumer benefits from trade liberalization, and

8. provincial participation in the management of the FTA and the MTN.

Because there is a strong natural resources component in our western Canadian economics, we have also identified the following issues as particularly important to achieving our objectives in the Uruguay Round:

1. **Tariff reductions**. We are seeking the reduction of all tariffs on natural resource-based products (whether applied to their raw or fully processed forms). We favour a formula approach to tariff cutting because it offers the best chance of achieving deep tariff cuts.

2. **Increased binding of tariffs**. We are seeking to bind the tariff schedules of many of the developing countries under the GATT, in order to prevent their arbitrary increase and manipulations.

3. **Graduation**. In addition, we are seeking to graduate the more highly industrialized of the developing countries out of their preferential tariff status. Some of these developing countries (Singapore and Korea are two prime examples) have now achieved per capita incomes and levels of development that rival those of some western European nations. We believe it is high time that they assume GATT obligations commensurate with their level of economic development.

4. **A phase-out of tariff-rate quotas**. These arrangements allow access under a very low or nil rate of duty up to a pre-determined volume of imports. When that quota volume is reached, the applicable tariff rate is increased sharply and further imports can enter only at the new higher rate. Tariff-rate quotas have become a particular problem for certain western Canadian resource exports to the European community (e.g., softwood plywood). We would prefer to see these measures eliminated altogether and replaced with a regular bound tariff, free of quantitative restrictions. That way, over time, we can attempt to negotiate a lower level for that bound tariff.

5. **Export subsidies**. We are seeking a complete ban on natural resource export subsidies and the establishment of strong multilateral remedies to ensure compliance with the ban. Furthermore, we believe there should be no exceptions to a subsidy ban for developing countries.

6. **Supply access/Market access linkages**. Finally, we reject any attempt by other GATT members to link increased access to Canadian natural resource supplies to improved foreign market access for Canadian natural resource exports. We believe, as a matter of principle, that the jobs and economic benefits involved in the further processing of western Canadian resource exports should accrue to western Canadians. Access to foreign markets should be granted as a

matter of principle and negotiated on the basis of similar market access commitments from Canada, not on the basis of resource access commitments.

The other area of overwhelming importance to the western Canadian economy is agriculture. We have already prepared two western Canadian position papers on agriculture. For the most part, these were fairly technical papers dealing with the various competing definitions of an "aggregate measure" of support in the agricultural negotiations and the various short-term measures being bandied about prior to the mid-term review in Montreal. We also have several sector-specific papers now under preparation, covering grains and oilseeds, livestock and horticulture.

As you can appreciate, there are a number of conflicting viewpoints in the western Canadian agriculture community. Some sectors are very export-oriented and therefore preoccupied with foreign market access barriers. Other sectors are more oriented to the domestic market and are therefore concerned about increased import competition. Our job as ministers has been to try to reconcile these two positions.

On a number of issues, I believe we have been successful. For example:

1. because all four western provinces deplore the continuing export subsidy war that is disrupting the international market for grains, we are firmly in favour of achieving a stronger GATT-sanctioned discipline on the use of trade-distorting agricultural subsidies; and

2. all four western provinces "recognize the right of commodity groups to operate under supply management and income support programs which are consistent with the rules of the GATT".

I believe the operative concepts in both these statements are "non-trade distorting" and "GATT-consistent". Agricultural support programs that are not trade-distorting should not be considered when attempting to quantify the level of support for a country's agricultural community. Similarly, supply management regimes that comply fully with Article XI of the GATT—and there are several in Canada that clearly do—should not be on the table for negotiation.

Where we may face some difficulties in western Canada—and in Canada as a whole, for that matter—is in supply-managed commodities that do not currently comply with Article XI (either for reasons of inadequate import access or for disputes over the extension of coverage to processed products as opposed to primary products).

I want to emphasize, however, that our right to establish and maintain a supply management system is in no way under attack. Supply management is clearly provided for in Article XI, and no one is questioning our right to operate under such a system. Our challenge will be, as it is in all programs with an impact on trade, to make sure that our supply management programs are fully consistent with GATT.

In closing, I would like to reiterate, on behalf of all the western trade ministers, that we believe a further liberalization of international trade to be clearly in the best interests

of western Canada. Reduced foreign trade barriers (both tariff and non-tariff) will have four results:

1. further development and diversification of the western Canadian economy,
2. new export market opportunities for western Canadian industry,
3. more jobs for western Canadian workers, and
4. greater choice and lower prices for western Canadian consumers.

Finally, we should all remember that there will undoubtedly be some costs associated with the move to freer international trade. These costs will be transitional and temporary. The benefits, on the other hand, will be permanent and long-lasting.

GATT and the Uruguay Round: The Implications of the Round for the Pacific Region

Charles R. Carlisle
GATT Secretariat, Geneva

I have been asked to speak today about GATT and the Uruguay Round and about the implications of the Round for the Pacific region. My remarks concern four subjects:

1. the current status of the Uruguay Round and the challenges confronting us in the Round;
2. the importance of the Round to the world economy;
3. the importance of success in these negotiations for the nations of the Pacific; and
4. the health of GATT and the prospects for a successful Uruguay Round.

The Uruguay Round

We are now more than half-way through the most complex and ambitious trade negotiations the world has ever seen. Launched by ministers from more than 90 countries at Punta del Este, Uruguay, in September 1986, the Round is scheduled to be completed by the end of 1990.

Shortly after the Ministers met we established 15 different negotiating groups, drew up negotiating plans, chose chairmen for the negotiating groups, and started to work. The negotiations cover not only traditional subjects such as tariffs and quotas. They also seek to bring agriculture effectively under GATT's rules and address new subjects such as services, trade-related investment measures, and the trade-related aspects of intellectual

property rights. We also are trying to improve the way the GATT functions and, for the first time in a GATT negotiation, we are reviewing its rules to see how they can be made better.

In December 1988 in Montreal we had a mid-term review with, I might add, the very active participation of Canadian trade minister John Crosbie, as well as other Canadian officials. The purposes of the meeting were to review our work to date and, more important, to agree on the scope and direction of the negotiations in the Round's final two years.

Many articles in the press characterized the Montreal meeting as a failure because we were not able to reach agreement on four key subjects—agriculture, textiles, intellectual property, and "safeguards" (GATT jargon for the measures governments take when import surges threaten domestic industries). And because we could not reach agreement in those four areas, a group of Latin American nations, desirous of a substantial result in agriculture, announced that they would not join any consensus on the other 11 subjects until agriculture was agreed. Thus, the entire Round was effectively put on hold.

This gave rise, perhaps understandably, to reports of "failure" and a "crisis" in the Round. Only after reading beyond the headlines was it clear that Ambassadors to the GATT meeting in Geneva, had reached agreement on six subjects before the Montreal meeting began and that Ministers meeting in Montreal had reached agreement on five others.

The Montreal meeting can be considered a success by any reasonable standard. For example, governments agreed to cut tariffs in this Round by more than 30 per cent; a number of governments agreed to reduce or eliminate duties on many tropical products and to do this, not at the end of the Round, but now; agreement was reached on speeding up and streamlining dispute settlement procedures; and agreement was reached on the establishment, on a provisional basis, of a trade policy review mechanism, which will systematically review the trade policies of all GATT members. This new review mechanism holds great promise in helping to curb protectionist practices.

The Montreal meeting scored perhaps its greatest breakthrough in services, one of the most vexing issues in the Uruguay Round and one that had produced sharp north-south divisions. At Montreal, however, Ministers were able to agree on how the negotiations are to proceed and that a draft framework agreement should be ready by the end of this year.

At the end of the Montreal meeting Ministers agreed that high officials should meet in Geneva during the first week in April to deal with the four remaining subjects. That Geneva meeting was a success.

The negotiating deadlock on agriculture was broken by agreeing that over the long term there should be "substantial progressive reductions in agricultural support and protection sustained over an agreed period of time . . .". Governments also agreed between now and the end of the Round ". . . to ensure that current domestic and export

support and protection levels in the agricultural sector are not exceeded . . . within the scope of their existing legislation and their existing GATT rights and obligations . . .".

After two years of debate governments were also able to agree on the issues to be addressed in the intellectual property negotiations. In addition, agreements were reached on textiles and safeguards, thereby completing a package on all 15 negotiating subjects.

While we are pleased with the results of the Montreal and Geneva meetings, we are not complacent. Essentially, the first two years of the Round were spent discussing what we would be negotiating in the last two years. That first part was the easier part, but even that was not easy. Now, we must come to grips with, and resolve, some very difficult negotiating issues:

- How can we substantially liberalize trade in agriculture and bring this trade effectively under GATT's rules?
- Can we strengthen access to markets for manufactured goods and commodities? Do we have the vision—and the political courage—to begin freeing trade in such products as textiles and steel and to get rid of subsidies?
- What rules are needed for the new areas of trade in services, intellectual property rights, and trade-related investment measures?

The Uruguay Round and the World Economy

Just to ask those questions—and one could ask others—suggests the daunting challenges confronting us as we drive to finish the Round within the next 18 months. It is vitally important to the world economy that we overcome those challenges.

The massive indebtedness of a number of developing countries is still with us. That debt has *increased* from more than US$800 billion in 1982 to US$1,300 billion last year.

Trade liberalization by itself cannot solve the debt problem, but can we possibly get on top of that problem without trade liberalization? A successful Uruguay Round can help the indebted countries to expand their exports and to grow their way out of their great difficulties.

We also still confront huge current account imbalances. The Federal Republic of Germany had a US$54 billion surplus in the last 12 months, Japan had a US$77 billion surplus and the United States had a US$125 billion deficit.

These imbalances are simply unsustainable, if for no other reason that not even the United States can go on indefinitely adding to its foreign debt. Correcting the imbalances will mean a major shift in world trade, and the two most important questions are: *When* will the shift occur and *how* will it occur? Will it come about primarily through export expansion—and that seems to have been the case until now—or will it come about

through import contraction? A successful Uruguay Round will increase the chances that the adjustment will be based on export expansion and economic growth, not on import contraction and recession.

Finally, we need trade growth to stimulate world economic growth. GATT's economists have calculated that the growth rates of both world merchandise trade and world merchandise production have been falling over the last two decades. World trade grew at an annual rate of 8.5 per cent in the 1960s, and at a 4 per cent rate in the 1980s. Similarly, merchandise production expanded at a 6 per cent rate in the 1960s, and at a 2.5 per cent rate in this decade.

We did have a good year last year. Merchandise trade grew by an impressive 8.5 per cent, merchandise production by 5.5 per cent—just like the good old 1960s! We need more years like 1988.

Implications for the Pacific Area

The subject of economic growth takes me inevitably to the matter you asked me to address—the implications of the Uruguay Round for the Pacific. Canada, the United States and Mexico all have long coasts on the Pacific, as do several countries in South America, but by Pacific I mean, somewhat arbitrarily, Australia, the People's Republic of China, Hong Kong, Indonesia, Japan, South Korea, Malaysia, New Zealand, the Philippines, Singapore, Taiwan and Thailand.

These 12 countries and territories, which together have a population of 1.6 billion—almost a third of the world's population—are diverse in many ways. But when one looks at the economic statistics certain things stand out.

First, their economic growth per capita, in real terms, has been increasing much faster than that in the rest of the world on average. From 1965 to 1986 annual per capita GNP growth, adjusted for inflation, was in the range of 2 to 3 per cent worldwide. In nine of the 12 countries and territories I have mentioned, however, the comparable figures were in the 4 to 7 per cent range, with Singapore at the remarkable level of 7.6 per cent. At that rate per capita GNP doubles in less than 10 years.

Second, their economies are heavily dependent on exports. According to World Bank figures, exports of goods and services as a percentage of total output averages 17 per cent for industrial countries and about the same for developing countries, 19 per cent. In seven of the 12 Pacific countries and territories the figure ranges from 21 to 57 per cent. In two, Hong Kong and Singapore, the figure is actually greater than one, 112 per cent and 187 per cent, respectively. In only three countries—Australia, China and Japan (with 12 per cent)—are the percentages below the general averages.

Third, as you might suspect, their exports have been growing faster than those of the rest of the world. Between 1980 and 1986, industrial country exports increased at an average annual rate of 3.3 per cent, those of developing countries by 4.8 per cent. Nine of

the 12 countries topped those figures, with export growth of 5.5 per cent annually to 13.1 per cent (South Korea).

When we look at merchandise trade flows within and among regions a similar picture emerges. During the period 1980-88 trade among the 12 grew at an average annual rate of 11.7 per cent, but trade between the 12 as a group and North America grew even faster—by 11.9 per cent. Moreover, trade between the 12 and Western Europe increased at a very respectable rate of 10.1 per cent a year. Trade within North America, within Western Europe and across the Atlantic grew at lower rates in the same period.

These few statistics confirm what we already know: that when one talks about the Pacific one is talking about a dynamic region characterized by strong, export-led growth.

Does such a region have a stake in the success of the Uruguay Round? The answer, it seems to me, is obvious. Yes!

I should add that the nations of the Pacific not only have an important stake in the overall success of the Round, they also have a direct interest in the success of many of the individual negotiations. Textiles is an obvious example. In the Uruguay Round we have the opportunity to begin phasing out the numerous restrictions that beset world trade in textiles and clothing.

Trade in other manufactured goods, which account for more than 50 per cent of all world trade, is another example. Just think of all of the manufactured exports from the Pacific nations.

Agriculture is a third example. A number of these nations are important and competitive producers of agricultural products. And why not services? Will all the services exports be from Japan, Europe and North America? Can developing nations produce software and undertake construction jobs in foreign countries? Of course they can.

But just a minute. Would not some sort of regional free trade arrangement serve just as well? To be blunt, the answer is no.

I hasten to add that at the GATT we are *not* opposed to customs unions or free trade areas such as the European Common Market and the Canada-U.S. Free Trade Agreement. Indeed, Article XXIV of the GATT specifically permits such arrangements. Paragraph 4 of that Article says:

> The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

The GATT looks with favour upon such arrangements, provided they facilitate trade and do not raise barriers to parties outside the arrangements. In our view, however,

customs unions and free trade areas cannot be substitutes for a strong, liberalizing multilateral trading system. They can only be useful adjuncts.

This view is rooted not in a fear that GATT's 400 people will lose their jobs, but in economic truth: The larger the universe, the greater economic efficiency and income maximization. If the nations of the Pacific wish to have secure opportunities in the large, rich markets of North America and Western Europe, they will work hard for a successful Uruguay Round. Fortunately, they are doing just that.

GATT's Health and Prospects for a Successful Uruguay Round

In concluding my remarks I shall try to answer two separate but closely related questions: First, how healthy is the GATT? Second, will the Uruguay Round be successful?

I raise the first question because the answer to the second depends in part on the answer to the first, and also because one sees occasional articles by prominent economists and businessmen to the effect that the GATT is moribund or ineffective.

All of us will admit that the GATT can stand improvement, that, for example, it has not been able to prevent a number of "voluntary" and "grey-area" trade restrictive measures and that its mechanism for settling bilateral trade disputes is not as effective as we would like it to be.

But all of this is hardly an admission that GATT needs to be replaced or is about to go out of existence. Would a moribund institution tackle the kind of agenda GATT is now tackling? In fact, it would be hard to imagine a more ambitious agenda than the one we have set for ourselves.

Would Ministers of 100 nations have spent a week arguing and discussing night after night in Montreal—in December—if the institution were ineffective and needed to be replaced? We had more than 1,000 delegates at Montreal. Some of the delegations numbered over 70 persons and included several ministers and numerous representatives of the business community.

And would 10 more countries be applying to join the 96 nations already in GATT if the organization did not have a future?

Our dispute settlement process can stand improvement, but at Montreal Ministers agreed on measures to improve it; further changes may be agreed by the end of the Round. At the June meeting of the GATT Council, our regular governing body, 14 of the 28 agenda items concerned the settlement of disputes. Indeed, GATT's dispute settlement mechanism has never been put to greater use.

In short, we have in place a healthy institution, one that needs improvement but that will be improved, one that is squarely facing up to the challenges of the world trading

system as we move toward the conclusion of the Uruguay Round. Will the Round be concluded successfully?

Certainly, the negotiating problems we confront are formidable. They are not only new, complex and extensive and involve hard commercial issues; they also raise fundamental differences, one might say cultural differences, in the way nations look at some of the issues.

Of course all of these things do not make the task any easier. Moreover, there are bilateral disputes and tensions, present and potential, which if not managed carefully, could seriously disrupt our negotiations.

Despite the obstacles—and we must not underestimate them—I believe that we shall achieve a substantial success by the end of the Round in 1990.

First, as I have tried to demonstrate, we have a fundamentally sound institutional structure to assist the negotiating process. Second, while the very sweep of the negotiations makes them more difficult in one sense, in another sense, it makes them easier. With 15 negotiating groups at work the scope for trade-offs between various issues increased dramatically.

Third, we have an extremely capable and experienced group of officials and negotiators at work, posted in Geneva and coming from capitals. While negotiating positions often are strongly held and exchanges are sometimes sharp, there is nonetheless a collegial and problem-solving spirit that pervades virtually all of our deliberations.

My fourth, last and, in my judgement, most compelling reason is that we shall be successful because governments everywhere strongly desire that the Round succeed. Whatever their political orientation, governments around the world are seeking to give market forces greater play—that is one of the most important developments in the last part of this century—and that is what the GATT and the Uruguay Round are all about.

Part IV

Completing the Uruguay Round:

Selected Issues

Negotiating Services

P. David Lee
Office of Multilateral Trade Negotiations

Trade in services is a subject with which I have had some connection over a number of years; it is an important part of the multilateral trade negotiations, and I welcome the opportunity to set out a number of personal views—personal if only because on at least several items the government of Canada has not yet been called upon to pronounce itself, or at least not in much detail.

First I would like to acknowledge with appreciation the considerable research that the Institute for Research on Public Policy, together with the Fraser Institute and Statistics Canada, has done in the last several years under the Service Industries Study Program (SISP), on behalf of the government through the Department of Industry, Science and Technology. It has made a very valuable contribution to a better understanding of the services economy.

Trade in services is important not only in its own right, but also because of its contribution to production in other areas of economic activity. The SISP research results show clearly that the growth of the service sector is a fundamental part of modern industrial development and that producer services have become the engine of growth for the service sector, as well as a significant part of the growth of goods-producing sectors. Increasing the services component has become a deciding factor in the competitiveness of Canadian goods exports. Although service trade flows are hard to measure, at least one estimate is that approximately 39 cents of every export dollar comes from services. For Canada, the services area is one of high priority in the Uruguay Round, even though we are a net importer of services. A key element of our future economic growth will be the ability of Canadian service providers to gain and secure access to world markets. But also of great importance to Canadian policy makers, as well as to users of services within the

Canadian economy, is the accessibility of world class competitive service inputs—Canadian or foreign.

Services are the predominant component in the Canadian economy. They account for some 76 per cent of employment and 70 per cent of our gross domestic product. Nine out of 10 new jobs created in Canada over the last few years were in the services sectors. In terms of employment and GDP, the service sectors are growing in importance in all provinces in Canada—most prominently, business services. Between 1978 and 1985, employment in the business sector sector grew by 41 per cent, compared with 14 per cent for the economy as a whole. Services are important not only in their own right, but also because of their contribution to production, distribution, training, maintenance and other activities in other sectors.

Our *trade* in services is relatively small, however, compared, with the overall significance of services in the Canadian economy. Our exports of services in 1987, according to the admittedly imperfect figures we have (and, of course, excluding investment transfers), amounted to some $18.2 billion—almost 12 per cent of our total export receipts. Imports were $23.5 billion or just over 14 per cent of our total payments. This deficit is traditional for us. It stems largely from our trade with the United States and the European Community. We do enjoy a small surplus in services trade with Japan and substantial surplus with a number of developing countries. Nevertheless, despite our deficit overall, our export of business services has been very dynamic. The annual growth rate between 1970 and 1985 was approximately 15 per cent. Consulting and professional services, communications, refining and processing service exports have been particularly strong.

The inclusion of important provisions on trade in services in the Canada-United States Free Trade Agreement reflected the government's awareness, as indeed that of the United States, of the increasing importance of services as a generator of economic growth and employment and the benefits of allowing and encouraging services trade in an open trading environment.

Similar considerations apply for our interest in the services negotiations in the Uruguay Round. Some 45 per cent of our service exports are to non-U.S. markets, compared to approximately half that percentage for our goods exports. A number of the developing and the newly industrializing countries are increasingly important markets for our service exports, with considerable potential for continued expansion. Non-OECD countries take about a quarter of our business service exports.

We see the negotiations as contributing in three ways to Canadian trade and growth. One is to ensure that we have the most efficient and world-competitive inputs to the Canadian economy as a whole. Second, we have some major export interests and we want to secure and advance access for those interests in a number of markets abroad. Finally, as both an importer and an exporter of services, we want to ensure there is a framework of rules, a GATT for services if you like, that provides a secure and balanced framework for all players in services trade.

Like other countries, Canada faces barriers to market access for our services exports. Some of the barriers are similar to those addressed in the Canada-U.S. negotiations, while others reflect different kinds of conditions in other markets. The temporary movement of skilled personnel was of primary importance for Canada in the negotiations with the United States. Barriers in other countries also consist of local supply requirements, discriminatory regulations on the operation of business, and government monopolies or government-sanctioned private monopolies.

Services of all types are an increasingly important component of the global economy. The services sectors are growing in virtually all countries, as well as in every region of Canada. Notably in the Pacific Rim, high growth rates make these countries attractive and dynamic partners for increased trade in services. The principal markets of interest are Japan, Korea, Hong Kong, ASEAN, Australia and New Zealand. The key service sectors are insurance and other financial services, transportation, tourism, consulting engineering and project management, and telecommunications and information services.

In the MTN services negotiations, our objectives with respect to the countries of the Pacific Rim are a microcosm of our overall objectives: first, to secure existing market access for Canadian services exports through the application of such principles as transparency, most favoured nation treatment, national treatment, and dispute settlement to as many sectors as possible; and second, to expand services trade opportunities through the mutual reduction of barriers. The negotiation of a multilateral framework of rights and obligations for trade in services will be essential in securing an open and non-discriminatory environment for trade around the Pacific, as indeed in the rest of the world. The elimination of barriers to market entry, impediments to commercial presence and access to distribution channels, and restrictive government procurement will expand services trade opportunities for all participants.

The economic growth and development of Pacific Rim countries will benefit from efficient service industries, but they also have much to gain from opening and securing markets abroad for their own exports—whether it is Korea in regard to construction and engineering (to say nothing of shipping), or Thailand in tourism and business consulting, or India in engineering and software services. Australia and New Zealand have both made clear their interests in a strong multilateral services agreement—as has Japan. For us all, large countries and small, developed and developing, a strong framework of trade policy-based principles and rules will offer improved assurance of economic growth and development through enhanced trade on a genuinely multilateral basis.

The Uruguay Round gives the international trading community a chance to write the basic rules of the game for services trade on a broad horizontal basis. Moreover, an MTN agreement on services would enhance the role of the multilateral trading system, as services are expected to be a major area of growth for national economies and world trade in the twenty-first century. The creation of a multilateral framework of rights and obligations for exporters and importers, a framework that would, *inter alia*, impose disciplines on the unilateral or protectionist actions of government and establish a mechanism for the settlement of disputes, should be of particular interest to relatively small countries, among which one must count many of those around the Pacific Rim. Existing arrangements of a bilateral or multilateral sectoral nature provide the present

legal and institutional framework, such as it is, for international trade in certain services. These arrangements are quite varied in nature, reflecting the wide diversity of service industries and regulatory regimes. (Air travel, for example, takes place within a complex web of national, bilateral and multilateral rules.)

Several elements in the Canada-U.S. Free Trade Agreement (FTA) may be reflected in a multilateral agreement on services. The FTA shows that it is possible to negotiate a general framework of rules for services, incorporating principles of general application. The achievements of the FTA in the area of services include standstill with respect to trade restrictive government measures; national treatment of foreign service providers under future laws and regulations; a horizontal set of principles and rules; several annexes for specific sectors; and provisions on temporary business entry, investment, and dispute settlement.

The Uruguay Round affords the opportunity for negotiations among a larger number of countries where the complementarity and diversity of trading interests could provide the basis for an exchange of concessions as well as the kind of framework arrangement we achieved in the FTA. Private sector representatives have emphasized the value of a services agreement that would reduce existing barriers and result in economic benefits in this Round. A Uruguay Round agreement that secured and enhanced access to world markets for services would benefit exporters, business users and consumers. The increased predictability and assurance of non-discrimination that a multilateral agreement on services can provide would contribute to improved markets abroad for Canadian exporters. They would be able to plan and expand future business activities abroad in a more hospitable environment. The elimination of foreign barriers would open new business opportunities. Market access undertakings, particularly with respect to factor flows, would allow Canadian service firms greater flexibility in choosing the most appropriate forms of commercial presence in foreign markets. Business users in Canada would benefit in terms of price and quality from the enhanced availability and variety of internationally competitive Canadian and foreign inputs—including technology. Consumers would benefit from relatively better prices, improved choice, and quality.

With this background, I might say a word now about the Uruguay Round and trade in services. Efforts have been under way for a number of years to get services onto the international trade negotiations agenda. Finally, in September 1986, the Punta del Este Declaration provided a mandate for the negotiations on trade in services. I would like to mention four elements from that mandate. First, there should be negotiations on a framework to provide coverage of international trade in services. Second, there would not only be a framework, but also an undertaking to move progressively to liberalize this trade—including dealing with measures and practices that impede the flow of services trade. Third, there was specific language recognizing that one of the goals was the development of developing countries. Finally, there was an undertaking to respect the national policy objectives of individual countries and the regulations that implement them. Over the next couple of years, the work in Geneva proceeded, the Group of Negotiations on Services (GNS) got off the ground, the detailed work program was elaborated, and considerable exploratory discussions were held.

Finally, with Montreal approaching, the negotiators got down to more serious and concentrated work and developed the concepts in much more detail. As a result, the Mid-term review conference in Montreal agreed on a detailed list of trade policy concepts that Ministers believed to be "relevant" to a framework on trade in services. They worked out a preliminary understanding in relation to the scope of such a framework and agreed no sector should be excluded *a priori* from coverage. They developed some further language on the question of progressive liberalization and they agreed upon a timetable. This timetable, among other things, involves elaboration of draft elements of a framework by the end of 1989 and completion of the negotiations by the end of 1990.

Since then, a more detailed work program within the GNS has been agreed, and this involves further elaboration of the concepts in June, July and September of 1989 and the conceptual testing of framework principles against six sectors: the telecommunications and construction sectors at the June meeting, the transportation and tourism sectors at the July meeting and the financial services and professional services sectors at the September meeting. During the rest of 1989 the negotiators in Geneva will put together the elements of a framework agreement to be elaborated and refined during the course of 1990 and agreed upon as part of the overall package in the Uruguay Round by the end of that year.

In the remainder of my remarks, I would like to try out on you some thinking on what an Agreement might look like. It will build on a number of contributions and, I must emphasize, is inevitably a moving target as the negotiations proceed.

A *framework* would have a preamble setting out, *inter alia* agreed purposes and goals such as expansion of trade, growth and development. Presumably a framework would have a number of binding rules, it would have some definitions, it would deal with the issue of regulation, it would have a section on progressive liberalization, and then it would have some annexes and national schedules. Let me look at some of those in more detail.

Binding Rules, I suggest, would need to cover a number of issues. First, *transparency*. This would start with the obligation by each participant to publish the regulations, the laws, the administrative practices and the international agreements that set its regime for trade in covered services. There will probably also be an obligation for a notification of changed, or new regulations through the GATT secretariat. There are paper burden problems and other technical difficulties, but it would seem essential to provide for notification in some fashion. Some provision for cross-notification by country B about a lapse or failure of transparency on the part of country A would also be necessary. There should also be a provision for a national enquiry or reference point. It would *not* take over legal responsibility for the regulations, but would be a point where foreign governments and possibly foreign business could inquire about the regime that applied to them. A fourth transparency issue is the possibility of advance information, perhaps consultation, on new or changed regulations. We understand that this is constitutionally problematic for some countries, and while it is not an issue that needs to worry Canadians particularly, it is not clear that it is negotiable in this Round.

The next item is the notion of *most favoured nation* treatment (MFN). As you know, it lies at the heart of the GATT, as Article I. It should undoubtedly play a key role in a services framework agreement. Of course, there are problems with the application of most favoured nation treatment in these areas. There are issues related to 'free riders'. There are a number of other questions about how far it is possible to go in particular sectors, especially in areas where there already exist international arrangements, often of a bilateral nature. These will have to be sorted out. But in my view, it has to be assumed that it would be part of an Agreement unless and until it is demonstrated not to be appropriate.

Another subject on which there should be rules is the notion of *exceptions*. Here I have in mind things like security or culture, both of which were given as examples in the Montreal text. I assume something will be necessary in this area, but it should be very carefully drawn—there should not be any broad loopholes through which the rest of an agreement can be circumvented.

Also, there is the issue of *safeguards*: something in this area will probably be unavoidable. But whether an agreement goes so far as to include specific provisions on dumping and countervail poses many problems. What an agreement *would* have to do is deal in some fashion with the issues of subsidies and other state aids. There are already difficulties in third markets, for example, in relation to construction through government assistance provided in certain cases. We will need to find a way to deal with issues in this area, because we want to avoid running into 'grey area' problems in a new services agreement, which have become so difficult in relation to goods.

Accordingly, the concepts of *nullification and impairment* will be very important—something we may have to work at over a period of time, beginning with this agreement. *Consultation and dispute settlement* likewise will have to be a key part of any agreement. There may be a number of other areas that would require binding rules—which would be applicable in their own right at the outset. But clearly *institutional and final provisions* would be included in that category. Would we want some kind of committee to manage the agreement? What about the issue of surveillance of the obligations—possibly surveillance if obligations are being phased in over a period of time, or if some countries take on less by way of obligations for one reason or another and wish to maintain that status or change that status? Do we need machinery to deal with renegotiating an item—along the lines of GATT Article XXVIII? The Australians have raised the idea of rebalancing from time to time. Those are issues where the jury is still out at this stage, but much work will need to be done during the course of the next 18 months.

The next major subject is definitions. I am not talking here about definition as it has been used in discussions to date, where we have been canvassing the possibility of a services definition, or a trade in services definition—quite unsuccessfully so far I must admit. (I am comforted by the recognition that the large SISP study also came up empty in these areas and has had to resort to listing the categories and sectors, which may be the way we end up in Geneva as well.) What I am talking about is a definition of at least three terms: one is scope, another is market access, the third is national treatment.

Scope would be defined to deal with the ways, or modes, in which services can be traded. There seem to be five or possibly six. One is cross-border trade, the traditional type of trade as in goods. Another is movement of a consumer of the service. Tourism is an excellent example. Provision must be made for the consumer of the service to move and to have that covered at least notionally under the framework and in the negotiations. Third is commercial presence or establishment, crucial for some services. A fourth category is information: here such issues arise as access to information, trans-border data flow problems, questions related to technology. For many service sectors, the ability to move information around is absolutely vital to their ability to engage in services transactions. Finally, the question of service provider movement—labour mobility—needs to be considered. The Free Trade Agreement we have with the United States has a chapter that bears on this, and it was very important to Canada that it be covered in that Agreement. Similarly, for many service areas, it is also important that it be discussed in the multilateral area. A possible sixth mode of trade in services is leasing.

By defining scope to cover these areas, we would recognize that they may be part of an agreement. But the specific obligations undertaken by individual countries would be the result of the negotiations. They might vary to some extent, country by country, depending on what each was prepared to undertake and what their trading partners were prepared to accept as a suitable contribution, and would be set out in their national schedules and appended to the agreement.

I would suggest that a similar approach might be taken with regard to **market access** and **national treatment**. Market access has to do with whether an exporter is prevented from selling in the market place by any government measure, i.e., beyond market conditions. Can you sell? Can you get there to sell your product? Do you have access to the purchaser? Perhaps it is the consumer that must move: if the consumer cannot move, you cannot sell your service.

Very closely related to market access is the issue of national treatment. They are not identical, certainly not conceptually, and they are not identical on the ground in most cases. But sometimes the barriers are very similar, and a single barrier can have an effect on access and on national treatment. The Montreal text has a definition of national treatment; it may need further work but it is a good starting point. One would get as clear and strong a definition of each as we could. Then we would negotiate the obligations, which would affect each country and which would be put in bound national schedules attached to the agreement.

The next category is **government regulation**. It is important to recognize that government regulation will not be eliminated by a services agreement; we are not in the business of deregulation. (It is obviously up to each individual country to decide what it may or may not want to do in that area.) Rather, we are talking about liberalization—progressive liberalization. The question of harmonization *can* arise, and that may be a good technique to look at in some areas. It is, once again, not a driving principle. But it would be important to recognize that if there are safety concerns, if there are prudential concerns, if there are health concerns, if it is a matter of an engineer having sufficient expertise to ensure the bridge does not fall down when it has been completed, governments have a legitimate call to step in. There *are* public policy purposes to be

served by government regulations. And some way must be found for governments to be satisfied that those public policy purposes are being respected by imports, as well as by locally produced services. So it is a matter of reconciling the genuine public policy purposes of regulation with the principle that the regulation be no more than is essential for those purposes, that it not be open-ended, that it be minimally trade-distorting and, of course that it be consistent with the services agreement that is worked out.

Coverage for the framework should be very broad: notionally, perhaps the reference list prepared by the Secretariat. It should in principle cover all commercially traded services. Coverage for what goes into the bindings, to be negotiated more specifically, would be the product of those negotiations. This is discussed below.

Turning to **progressive liberalization**, the first step would be an undertaking by all parties in the agreement that they accept the principle of progressive liberalization, i.e., to move step by step through the negotiations in the Uruguay Round and future rounds to liberalize their trade in services. That basic undertaking and direction should be clear. There would also have to be a 'ratchet', which would provide a floor—a rising floor—as liberalization took place, so that there was no back-sliding and no ability on the part of the participants—without paying some kind of penalty or engaging in some kind of negotiation—to worsen their regime.

Then one would envisage a number of techniques to put that basic commitment into effect. The first would be the **binding of existing regimes**—sometimes miscalled a freeze. Here again, I would think that the coverage should be quite broad. But this technique could pose difficulties for some countries. For example, a relatively small country with a relatively open market at present, by binding its regime against more protective change would be tying its hands for future rounds of negotiations. So while this technique could be important, it would not be a sufficient technique to use in the Round. To ensure equity in an Agreement, it might be necessary for some countries to liberalize in particular areas, while others simply bind their existing regimes in those respects.

One means of liberalization would be through a **formula, plus bindings**. A formula approach could liberalize a complete sector. For example, market access and national treatment could be provided for a whole sector or sub-sector. Alternatively, one could have a formula that would apply to a particular type of activity, one or more factor flows for example. Or the issue of export credits could be tackled on a formula basis across a range of sectors. The results of these negotiations could be put in an annex, bound, and attached to the agreement.

The final technique that I would propose is that of **request and offer** or exchange of concessions, plus bindings. This would be intended to deal with specific problems in particular markets and would be negotiated bilaterally or plurilaterally, and then multilateralized as part of the overall agreement. The specific commitments undertaken by individual countries would be recorded in national schedules, bound and attached to the agreement.

The question of **progressivity** can be tackled in at least two ways: one is with regard to the phasing of implementation of obligations. The commitments to liberalize, e.g., in the annexes or national schedules, would of course enter into force along with the rest of the agreement, but they might be phased in over a period of years (as tariff cuts on goods were phased in after previous GATT rounds). In addition, there would need to be an **arrangement to continue negotiations** after the end of the Uruguay Round.

In concluding, I would like to raise several of the issues that will require attention over the next few months. One is the **shape and content of the framework** that we are to work out in draft form by the end of this year. What parts of it are to be binding? Would we be using a positive list approach or a negative list approach or both? What is to be the coverage of the agreement? I suggested that it should be pretty broad, at least in so far as the framework is concerned. Is that sustainable? What about the coverage for the more specific liberalization obligations? How far can we go in dealing with this vast array of agenda items during the course of the next 18 months of the Uruguay Round? How much real liberalization is it realistic to expect? I suggested that everyone participating would need to make an "appropriate" contribution. What constitutes an 'appropriate' contribution and how to deal with free riders are issues to be resolved in the negotiations. The guiding principle would be that of reciprocity in the GATT sense: a broad balance of rights and obligations for all participants.

Then there is the question of the **developing countries**, which I have not had time to address specifically in these remarks. It is in Canada's interest that there be as broad a participation as possible, including a wide range of developing countries. Many of our service exports go to developing countries. While we do not like the notion of general derogations for self-selected groups of countries, I would suggest that the kind of approach outlined earlier in these remarks provides considerable scope and flexibility for individual developing countries to shape an agreement to reflect their national and developmental concerns, as well as the specifics of their economies and their trading patterns and prospects. Development aid and technical assistance may well need to be improved, but those matters should be decided in the appropriate places.

In conclusion, let me suggest that it will be essential to have a **substantial and effective services agreement** as part of a significant Uruguay Round outcome. At the same time, the more comprehensive the prospects for the Round as a whole, the more ambitious we can afford to be on trade in services.

Comments on Negotiating Services

Christopher Findlay

I would like to ask David Lee about some aspects of the proposed general agreement on services, in particular some of the principles he mentioned and how they might be applied in the services sector. Let me start with national treatment, because private sector firms involved in trading services are very interested in national treatment. In some industries they are happy or reasonably happy with market access; if you talk to the airline people, for example, they would say they are happy with market access arrangements. They have an institution for negotiating market access, but what is worrying them at the moment is whether, if they get into a market, they are going to be treated on the same basis as national suppliers. In the airline case, the concerns relate to access to ground services at airports or home carriers being given priority for landing slots (home carriers can park by the building while foreign carriers have to park far from the terminal).

Another example close to home is that the emerging entrepreneurial class in Australia has been trying to buy British companies. Sometimes they have to talk to the Monopolies Commission on the way. There has been some speculation about whether they would have been treated differently if a brewery, for example, had been bought by a British firm. That sort of regulation is of interest under the heading of national treatment.

Another example, which is important in the marine transport industry, is cabotage rules that restrict internal trade to local suppliers; that comes under national treatment as well. National treatment seems to be a useful principle to have in any sort of agreement aimed at liberalizing trade, but in some cases the difficulty lies in the difference between regulations in the country where service industry production occurs, and regulations in the country where consumption occurs. Another issue may be that

regulations also vary between supplying countries. In that case, is a complementary clause on non-discrimination also required, and is non-discrimination the same thing as harmonization of domestic regulation?

A great deal of thought would be required on how to harmonize regulation in banking, in telecommunications, in air transport. I wonder how that would be handled in a general agreement? Would you define harmonization as an objective and then have sectoral annexes, or would you handle it in your set of national annexes?

Another area where services firms have been complaining is where they have been damaged or injured by another party. This is going to be very difficult to handle in the services sector because of the nature of the production process. What is stored in the case of a service industry is the capacity to supply; the product is not stored. In these circumstances, prices can vary a great deal. For example in the air transport sector, I may be able to buy a cheap ticket, while other people have paid full price. Am I being subsidized? I don't think so. I am taking advantage of an efficient pricing structure that lets the airline fill up the airplane.

The bigger issue, perhaps, in the services sector is what you might call persistent subsidization. It would be helpful if some general agreement on services made a distinction between these short-term pricing issues and long-term persistent subsidization. I am sure subsidization is going to be an issue in the service sector because so many publicly-owned suppliers are involved, and there will be concerns that these competitors are not operating according to normal commercial criteria. This is an issue in the education sector in Australia, for example. Even within the country, the private suppliers are concerned about being undercut by the public sector, which is marginal costing its lecture rooms in the summertime.

On market access, is it not likely that there will inevitably be some sector agreements? How are they are going to be handled? In many areas of services trade there are existing institutions, for example, the system of air services agreements used in air transport. Suppliers in sectors with similar institutions are going to claim that they can handle these issues. They are also going to be claiming that their industry is a special case and should be treated separately, so there is going to be pressure to negotiate sector by sector.

The free-rider problem is going to complicate the negotiations. Producers and suppliers do not want to give away anything without getting a concession in return. They feel that if they accepted an MFN principle for services, they would be overwhelmed by the free riders. They might be willing to sanction some sort of conditional MFN arrangement that extended existing bilateral institutions to some sort of regional regime. Given the importance of networking in the service industries, it helps people get organized within their area or within their region before they are exposed to wider trade. But how to handle this? Do you add on to the general agreement a set of sectoral agreements, or can you handle this under the series of national annexes?

One final point. If I say I am comfortable with some sort of conditional MFN arrangement, will I be accused of 'leaving the church' of GATT. To move away from that

principle is certainly something to worry about. One reason why it is not such an issue in services trade, however, is that there is a fundamental difference between services and goods markets; that is what you might call the 'fungibility' characteristic. The point has been that the good thing about financial assets, for example, is that they are so fungible. They can be recombined in all sorts of different ways. If there were a regulation affecting one form of banking, people could find ways around it by putting together other forms of financial assets. I think that principle applies generally across the services sector; along with the technological changes that made that possible in banking, if you have a regulation in place people have incentive to get around it. Because of the simultaneous production and consumption of services, as well as the direct links between producer and consumer, it seems easier to differentiate any particular service activity, and so it is easier to get around a set of regulations. I see some sort of conditional agreement being a step along the way to freer trade, but in the long run any regulations will inevitably be undermined as a consequence of this fungibility characteristic.

Comments on Negotiating Services

Brian Hindley

David Lee's remarks on the nature of the agreement on international trade in services that might emerge from the Uruguay Round have been extremely interesting, but I am not going to respond directly to them. I have very little disagreement with his discussion of the detailed technical issues that must be solved if there is to be a substantial GATT agreement on trade in services.

David commented that he thought it likely that a services agreement would emerge from the Uruguay Round. I agree with that. But there is still a question of whether the agreement will be one of substance, one that has a real impact on the policies of governments toward international trade in services, or whether it will be empty. There is a distinct possibility that an agreement will emerge that does not commit anyone to anything very much, and that, for this reason, all or most of the participants will be able to sign. That might be represented as a diplomatic feat. But, by itself, the number of signatures on the agreement is a very poor indicator of whether the negotiation has been successful—that depends not only on the number of adherents but on the content of what they are adhering to.

To get at the issues involved in the question of whether the agreement will have substance, I am going to examine at a fairly abstract level the fundamental problems that the negotiation must solve in order to arrive at a substantial outcome. One set of problems lies in the pure technical difficulties of coming to an agreement on international transactions in services. These problems derive from the nature of services and exist regardless of the character of the countries in the negotiation.

Second, however, there are problems specific to the Uruguay Round negotiation. The position of the developing countries is central here. David Lee noted that he had not

touched upon the issue of developing country participation in any depth. I shall therefore take the opportunity to fill in that missing piece.

I take for granted the importance of services. We all know that services account for around two-thirds of world GDP. Neither that fraction, however, nor any of the others that are so often quoted seems to me to convey the *excitement* of thinking about services at a global level. Trade policy covers all sorts of issues that are interesting and important, but it is not an area abundant in excitement. But trade policy as it relates to services *is* exciting. Behind all the figures and the technical discussions, one can see glimmers of a new and radically different world. In that unsteady light the question that seems truly fundamental is whether the GATT agreement will move us—or make it easier for us to move—in the direction of that new world.

Here, however, I'm going to discuss difficulties rather than excitement. The first level of difficulty, those problems that will occur in a negotiation between any group of countries, can be captured by looking at differences between services and goods. Two differences have the potential to make negotiations on international transactions in services particularly difficult, as compared with negotiations on goods.

The first difference is that when a service producer based in country A provides a service to a client in country B, the transaction will often require international movements of factors of production. Alternatively stated, international delivery of many services requires some form of presence of the service provider in the market in which the services are being delivered.

Of course, some services can be internationally traded without movement of either the service provider or the service receiver, analogous to trade in goods. But such services do not in fact make up a very substantial part of the services sector. If international transactions in services are to be genuinely liberalized, some agreement on rights of establishment is necessary. And the idea of granting foreigners a *right* of establishment touches upon great sensitivities, in both developed and developing countries. I shall return to those sensitivities later.

The second major difference between goods and services is the extent and form of regulation. David noted that some level of regulation of the services sector by governments is defensible, and for present purposes, I'm content to accept that.

But regulation of service industries is difficult. One problem is that it is often extremely difficult to regulate the *output* of a service industry. Service outputs are very often heterogeneous. You talk to a lawyer or a doctor about one thing and I talk to them about another. When goods are regulated, the regulation very often focuses on the characteristics of the final output. In services, it is costly to regulate final output. Hence, in services, regulation more often focuses on the quality of the inputs.

Control of inputs, however, easily becomes control of entry. In the services sector, regardless of the rationale of regulation, regulation is in fact often the primary means of protecting existing providers of a service against new competition. And since a great deal of potential competition comes from service providers based abroad, that typically means

that regulation is the primary means of protecting domestic providers of a service against foreign providers of the service.

David commented that there is a problem about separating illegitimate regulation from regulation that is in some sense justified. That is indeed a very large problem. But it is not the only problem connected with regulation.

Let me illustrate by drawing on the experience of the European Community. The Treaty of Rome (Articles 59 - 66) says that there shall be free trade in services within the EC. Nevertheless, until the 1992 initiative, there had effectively been no movement toward actually freeing trade in the services sector of the EC. The basic reason for this failure was the prior existence of different national levels of regulation.

To take a specific (and, in the EC context, important) case, consider regulation of the insurance industry by Britain and the Federal Republic of Germany. German regulation of insurance tends to be heavy and detailed. British regulation is much lighter.

Think about the problem of trade in insurance services from a German point of view. Suppose the Germans said "Fine, we've signed the Treaty of Rome and the Treaty requires free trade in services. So let's go ahead. Let British insurers operating from a London base, which in this context means operating under the looser regulation of the British authorities, let them come here and sell insurance. Let there be cross-border trade."

What will be the consequences for Germany? One possible consequence is that the Germans will not be able to maintain their more stringent regulatory system. If they do maintain those more stringent regulations—which are expensive for German-based insurers—then German insurers are likely to lose in unrestricted competition with insurers operating under the looser—and therefore less expensive to conform with—British regulations.

Free cross-border trade in insurance therefore is likely to seem to the Germans to imply either that they lose their insurance industry or that they lose their more stringent regulatory system. And since they do not want to lose either, the Germans, and other EC member states, are antipathetic to free intra-EC trade in services—so antipathetic that they have until recently been unwilling to allow it to happen. Hence, in large part, the past failure to liberalize intra-Community trade in services.[1]

Several points about this EC experience are relevant to the broader horizons of the Uruguay Round. The first refers to the idea of legitimate and illegitimate regulation. As I noted earlier, defining a boundary line between the two is very important indeed—but it is not the only problem, nor even the most important problem, raised by regulation. The British and German regulatory systems, for example, both have advantages. German insurance companies do not become bankrupt. British ones sometimes do. A given policy typically seems to be cheaper in Britain than in Germany, but the different trade-offs between stability and cost inherent in different regulatory regimes authorities cannot easily be translated into an issue of legitimate and illegitimate regulation.

The real difficulty between Britain and Germany is not one, or is not primarily one, of legitimate or illegitimate regulation. It is better viewed as an issue of competition between regulatory systems. Free cross-border trade in a regulated service implies not only competition between providers of insurance, but competition between regulatory systems. The survival of at least one regulatory system —or of the regulated industry—is likely to be at risk in such competition. Cross-border trade threatens the ability of a national regulatory system to apply what it regards as proper and legitimate regulation when that regulation is more costly to comply with than the regulations of another national regulatory authority. When that happens, there is likely to be strong opposition to cross-border trade. Mere differences in regulation, in other words, can be a major barrier to the negotiation of free trade in services.

An obvious solution to this problem, in principle, is to harmonize regulations between countries. The difficulty is to choose the harmonized regulations. To return to the EC context, if Britain and Germany have different regulatory structures, which each regards, nevertheless, as the best way to do the job, how can a compromise be struck between them?

That may not sound a very difficult problem. Nevertheless, the Commission of the European Community, backed up by the Treaty of Rome, spent years trying to do it and finally gave up. If the Commission, with substantial legal powers, could not negotiate harmonized regulations among a group of countries that are very much more homogeneous than the members of the GATT, my guess is that this is not a useful route for the GATT negotiations to contemplate.

Nor, I think, is the way the Commission is attempting to solve this problem in the 1992 program a useful route to contemplate in the broader GATT context. The new EC approach depends upon the application to the services sector of the principle of the ruling of the European Court of Justice in the case of *Cassis de Dijon*. The essence of that ruling is that a product "lawfully produced and marketed in one Member State must, in principle, be admitted to the market of any other Member State". The ruling provides the legal basis for the principle of mutual recognition, which is the foundation for much of the 1992 program, and especially the parts pertaining to services. Under mutual recognition, each member state agrees to accept as lawfully marketable any product that satisfies the standards of another member state—subject to those standards meeting a minimum level.

Mutual recognition implies that the German regulatory authorities will not be able to reject a service product from another EC member state merely because it does not conform with German regulations. So long as the product conforms with the regulations of another member state, and the regulations of that member state meet the minimum standard, the German authorities will have to accept the product. It will be the home country of the provider of the product that regulates the provider of that product.

Thus, a British insurer will in principle be able to offer in Germany exactly the services he offers in Britain. That still threatens the Germany regulatory system, of course—hence the *political* need for minimum standards. The minimum standards, if you take a German view of the world, are to prevent regulatory standards being forced down through competition—to prevent regulation from becoming meaningless.

The negotiation of these minimum standards provides much of the actual business of the EC's 1992 project. It represents a very considerable advance on harmonization—the attempt to negotiate for each product a *single* standard that will then become obligatory for all member states—but it depends upon a legal ruling by a court that has no equivalent at the international level, based upon a treaty that has no equivalent at the international level. Even with these conditions met, the success of the 1992 initiative in the services sector is far from assured. This, therefore, does not seem a feasible route for a GATT agreement to follow.

Another possible solution, however, connects regulation with rights of establishment. If there are rights of establishment, to return once more to the EC case, British insurers can establish in Germany to sell insurance to German clients. That effectively means that the British insurers would not be able to sell from their more lightly regulated base—that the British insurers accept German regulations and sell insurance the way Germans insurers sell insurance. The German regulatory system is not threatened by such establishment trade in the way it is threatened by cross-border trade. But, while this solution has the advantage that German insurance buyers get the benefit of British competition in the insurance market, it also has the problem that the products and prices on offer are still constrained by the German regulatory system. Nevertheless, if the establishment problem in the GATT negotiation could be solved, the regulatory problem of the negotiation would become much less acute.

Perhaps I've spent too much time talking about the problems of the EC. In the context of the Uruguay Round negotiations on services, however, the experience of the EC provides a marvellous laboratory. The failures of the EC suggest the size of the problem that regulation poses to liberalization of services in the world at large. In the world at large, there is no Treaty of Rome, and it is impossible to conceive that the GATT negotiations will produce a document with more than a fraction of the force of the Treaty of Rome. Even with the Treaty and an independent Court of Justice, service trade within the EC has been blocked for 30 years. In the light of EC experience, there must be a major question as to whether the Uruguay Round can produce an agreement that will be effective in liberalizing international trade in services.

I turn now to the developing country aspect of the Uruguay Round negotiation. The politics and the dynamics of the negotiations from this standpoint seem to me to be the most interesting aspect—and indeed the most important aspect—of the negotiations.

Developed countries have a great deal of regulation and protection of services. My guess, however, is that developing countries have more. To do more than guess is not possible—even if the relevant statistics were available, which they most emphatically are not, I don't know how one would put them together to arrive at a comparative figure. Still, my guess is that the level of protection of services in developing countries is substantially higher than the level of protection of developed countries.

I don't say that in any sense of recrimination. The point is, rather, to suggest that the developing countries would receive a disproportionate share of the economic gains that would stem from liberalization of services on a global level.

Nevertheless, the simple fact is that the developing countries have by and large been hostile to the idea of a liberalization of trade in services. A good deal of current optimism about the position of the developing countries on this issue, and the putative change in it, rides on the fact that the developing countries went along with the Montreal statement. Without question, it was a diplomatic achievement to get the developing countries to put their signatures to the document, and it was not an event that could have been confidently predicted six months ahead of the Montreal meetings. Nevertheless, the Montreal document does not commit anybody to anything, and it certainly does not commit the developing countries to anything. It is therefore a poor test of how they will react if they are asked to commit themselves to something.

To get at the essence of the problem for the developing countries, it is necessary to return once again to the issue of factor mobility. A large part of the developing country hostility to the services negotiation lies in their perception that if there is to be a substantial liberalization of trade in services, then there must be some kind of provision for factor mobility and inward investment. Rightly or wrongly, many governments of developing countries lack enthusiasm for inward investment. They are certainly not enthusiastic about negotiating rights of establishment, or any other limitations on their present rights to restrict foreign firms wishing to locate in their territory, through the GATT

When the United States first raised the issue of bringing services into the GATT, it was very firm on the proposition that what it wanted to talk about was cross-border trade in services, or international trade in non-factor services. One advantage of that approach was that it was consonant with GATT tradition. The GATT deals with trade in goods, but not with foreign investment, so to limit the services issue to cross-border trade tied the issue more closely to GATT tradition than other formulations of the services issue would have done.

The emphasis on trade in non-factor services also had other advantages. One was that it avoided difficult problems. For example, faced with a suggestion that the developing countries should concede a right of establishment (or commercial presence, or market access, or whatever terminology is employed) to service providers from developed countries, the developing countries quite logically might have come back and said, "Well, if you want a right of establishment in developing countries to provide services in which developed countries have a comparative advantage, why not think of exchanging that for a right of our service suppliers to locate labour temporarily in developed countries to provide services in which *we* have a comparative advantage?". Such a counter-claim raises very difficult questions for developed countries. I will come back to the point because it seems to me central to the position of the developing countries in the negotiation.

The emphasis on trade in non-factor services also diffused opposition. If rights of establishment had appeared as a negotiating objective before Punte del Este, for example, there is a very real question as to whether it would have been possible to obtain the agreement of the developing countries to the services negotiation.

Despite the advantages of the U.S. focus on non-factor services, it also raised a variety of problems. One of these was simply that many U.S. service providers saw their

international problems as problems of establishment rather than problems of cross-border trade. An exclusive focus on issues of cross-border trade therefore failed to meet their hopes for what the negotiation might achieve for them.

Another problem lay in the fact that the services that can be cross-border traded—that can be traded without international movement of factors of production—tend to be services in which developed countries have a comparative advantage. In the terms of a traditional GATT negotiation, therefore, a focus on services that can be cross-border traded raised the problem of how an equal exchange of concessions could be obtained.

In posing that question, I am not abandoning economics. Economics says that imports are a benefit, not a cost, so that what are called concessions in the GATT terms actually confer economic benefits on the *giver* of the concession. That is absolutely correct. I have not the slightest doubt that any individual developing country, or all developing countries together, would be better off economically if they liberalized their services sectors unilaterally.

But these propositions are about economics, and a GATT negotiation is about politics. The central point about such a negotiation is that whatever economists think they should have done, the participants have *not* liberalized. The problem for the negotiation, therefore, is to persuade participating governments to take a course of action that they were free to take but have rejected—how to make it *politically* possible for a government that has not fully liberalized to do so. That is where exchanges of concessions come in.

But if, as the United States first proposed, non-factor services were to be the subject of the negotiation, there were a lot of potential concessions for developing countries to give, but very few for them to receive. All the potential offerings (in GATT terms) were in the hands of the developing countries, not those of the developed countries. To arrange an equal and substantial exchange of concessions was therefore difficult or impossible—the negotiation threatened to be stalled from the outset.

For whatever reason or combination of reasons, however, the first U.S. submission to the Group of Negotiations on Services (GNS) abandoned U.S. insistence that the negotiation was merely about cross-border trade in services. It quite expressly said that in the U.S. view, the negotiation was about establishment and transactions from local establishment as well as cross-border trade.

Whatever its motivation, the U.S. move away from insistence that the negotiation would be about trade in non-factor services was, when seen from the standpoint of equal exchanges of concessions, essential to loosen up the negotiation, to make it possible for it to go somewhere.

One of the things that gives the negotiation potential for excitement, however, is the logical next step. That is to contemplate the negotiation of a temporary right of abode of labour for the purpose of providing a service—that is, to allow service providers from developing countries to locate labour in developed countries in order to provide labour-intensive services. Such a right would create a potential *quid pro quo* for rights of establishment or rights of presence in developing countries for service providers from

developed countries. It would thus create the conditions in which an equal exchange of concessions could occur. If some breach could be made on the establishment issue, moreover, that would ease the problem of regulation.

Of course, the suggestion that labour from developing countries should have a temporary right of abode for the purpose of supplying services in developed countries is likely to raise major political problems in the developed countries. That route may not be feasible.

But if not, how is the negotiation going to progress? One way is for the developed countries to offer concessions outside the services sector. Many such non-service concessions from developed countries are of potential interest to developing countries. But as I read the current moods in the major developed countries—in particular in the EC and the United States—they are much more inclined to take than to give in issues involving developing countries. While the route of concessions outside the services sector to match those offered by developing countries within it is open in principle, therefore, I do not think it is open in practice.

But if not, the possibility of an empty agreement looms, at least so far as developing countries are concerned. That outcome is likely if the substance of the negotiation is restricted to the tiny span of services within which an equal exchange of concessions is possible between developed and developing countries in the absence of commitments on international movements of factors of production.

This empty outcome would most likely take the form of provisions for special and differential treatment for developing countries, effectively exempting them from any commitments under the agreement. That would be a bad outcome. Whether the governments of developing countries recognize it or not, their economies stand to gain a great deal from their acceptance of a strong agreement.

But a bargain is there to be struck. Will the participants shy away from the difficulties of reaching it? I cannot yet see clearly which route the negotiation is going to follow. That will be one of the more interesting and important answers to emerge from the Uruguay Round.

Notes

1. The problems of liberalization in the EC services sector are discussed in more detail in Brian Hindley, "Trade in Services within the European Community", in Herbert Giersch, ed., *Free Trade in the World Economy* (Tubingen: J.C.B. Mohr [Paul Siebeck], 1987.

Completing the Uruguay Round: Negotiating New Rules for Agriculture*

William M. Miner
Institute for Research on Public Policy

Based on the experience of the Montreal GATT ministerial mid-term review, progress in negotiating agriculture has become a prerequisite to completing the Uruguay Round. The message, delivered so effectively at Montreal by a number of important developing country exporters and supported by several industrial countries, is that a means must be found to liberalize farm trade and strengthen the GATT rules for agriculture if the Uruguay Round is to succeed. Five months later, in April 1989 in Geneva, governments were able to agree on a framework to continue the negotiations on agriculture and to place a cap on domestic and export support and protection levels for agriculture until the completion of the negotiations by December 1990.

However, the April agreement represents a political framework and an agenda for the negotiations, with concrete results still to come. Thus governments have a short 18 months to accomplish for agriculture what they have largely failed to achieve under GATT in the last 40 years. The opportunities for progress are undoubtedly better than they have been in previous GATT Rounds, but the task of negotiating freer trade for farm products and effective international rules for agricultural trade is a formidable one.

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* By W.M. Miner, Senior Research Associate: Agriculture, The Institute for Research on Public Policy for the Conference on Canada, the Pacific and the Uruguay Round, Vancouver, B.C., June 28-29, 1989.

Why Is Progress In Agriculture So Difficult?[1]

Although it is risky to generalize in such a complex area, the problems for agricultural trade emerge from a number of basic developments, the key ones being these:

- Farm output in the more advanced countries has generally exceeded commercial demand, stimulated by remarkable improvements in technology, government subsidies and border protection; as a consequence, real prices of basic agricultural commodities have declined for decades.
- Although population is continuing to increase, much of the growth is occurring in developing countries where economies are poor and diets are inadequate.
- Government policies to support farm incomes, in response to political pressures, have tended to aggravate these trends; in industrial countries price supports and frontier barriers add to supplies and reduce trade; the developing countries discriminate against agriculture by keeping prices down and taxing exports.
- General economic developments in the last decade, particularly inflation, fluctuating exchange rate values, high interest rates and the suffocating debt load of developing countries, have made the problems of agriculture much worse.
- Governments have been unwilling to accept effective international disciplines with respect to their internal farm programs, and the GATT is riddled with exceptions, waivers and grandfather classes that weaken or avoid the application of its trading rules to agriculture.

Building Consensus for Reform

Important progress has been made in establishing political agreements to address the trade problems for agriculture. In the Punta del Este Declaration, which launched the Uruguay Round, governments agreed to negotiations covering both internal and frontier measures that affect import access and export competition. The confrontation in Montreal which led to an impasse, represented a major effort by the United States to stake out a long-term goal for agriculture of virtual free trade. By insisting on the elimination of all forms of protection and support (except for decoupled farm programs), the United States was aiming at the eventual removal of government intervention from agriculture and the opening of frontiers to permit competition on the basis of comparative costs of production and international prices.

Whether all the U.S. agricultural groups would have accepted such an outcome will not be known, since the European Community certainly would not. It would have represented a hard political commitment to eventual removal of the fundamental element of Community preference from the Common Agricultural Policy (CAP). The Community had not established a position on longer-term reform of the CAP and indeed this is the situation today. The European Community has taken difficult decisions to contain

surplus production and agricultural expenditures but not, as yet, to undertake fundamental reforms of the CAP. The Nordic countries and Japan, in addition to the Community, insist on continuing some border protection and farm subsidy support for their agriculture.

The Cairns Group countries, including Canada, supported the U.S. approach in order to push for a substantial agricultural result. These countries, which include a number of Pacific Rim nations, stand to gain from a more open trading system and reduced competition from government subsidies. But like the United States they also have some farm sectors that are not internationally competitive, so a result that eliminates all or most government support programs would be difficult for most to accept.

However, all of these countries, including the European states and Japan, have tabled proposals in Geneva that provide the basis for a major negotiation on agriculture. In general they aim at significant restrictions in subsidies that distort trade, the lowering or removal of border restrictions, and a strengthened GATT regime for agriculture.

The agreement reached in Geneva in early April 1989 provides an acceptable basis for continuing the negotiations. It calls for substantial progressive reductions in support and protection, and places a ceiling on current levels. The text of the agreement adopted by the Trade Negotiating Committee (TNC)[2] on behalf of Trade Ministers is described as a framework for liberalizing trade in agriculture and bringing all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines. It also puts a lid on current levels of agricultural support and protection, and the participants stated their intentions to reduce levels for 1990. Thus the Punta del Este commitment to liberalize farm trade and negotiate stronger GATT rules for agriculture has been renewed, although no clear picture has emerged as to how this should be done. The agreed text states that

> there is a broad measure of consensus that agricultural policies should be more responsive to international market signals in order to meet the objective of liberalization of international trade and that support and protection should be progressively reduced and provided in a less trade-distorting manner.

Governments agreed that

> the long term objective of the agricultural negotiations is to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines.

Evidently a two-track approach to the agricultural negotiations is envisaged, consisting of commitments on substantial progressive reductions in agricultural support and protection on one hand and the negotiation of stronger and more effective GATT rules on the other. The comprehensive negotiation on levels of support and protection may be based on the concept of an aggregate measure of support (AMS) or an equivalent across-the-board approach, with appropriate rules to cover such commitments. The second track would involve the negotiation of stronger and more operationally effective GATT rules for

agriculture to be "equally applicable to all contracting parties" and to "encompass all measures affecting directly or indirectly import access and export competition". The so-called freeze on current levels of support and protection represents a precedent; it is the first time limits have been placed in GATT on domestic agricultural programs. The Geneva accord includes a full work program designed to bring the negotiations to a successful conclusion by the end of 1990. Indeed, governments agreed to implement the first tranche of long-term reforms in 1991.

Reducing Support and Protection

The framework agreement closely links the negotiations on agricultural support levels and on border protection. The European Community has tied the negotiations on frontier measures and export subsidies to reductions in internal subsidies and support programs. Apparently, the Community is unwilling to lower protection more quickly than governments are prepared to reduce the support programs that stimulate excess output.

The United States and the Cairns Group countries pressed for progressive reductions and eventual removal of trade-distorting support and agricultural protection. These countries wish to ensure that the results provide for greater access to agricultural markets and disciplines on export subsidies. The United States has claimed that the result provides for the elimination of agricultural support and protection, while the Europeans did not agree to go that far.

The negotiations with respect to the first track (overall reductions in agricultural support and protection) will presumably involve reaching agreement on the terms of an aggregate measurement of support or comprehensive undertakings on policies and the form of the commitments in relation to GATT. This would require agreement on a program of reductions by a certain magnitude and time schedule. The commitments would be described in terms of a percentage across-the-board cut, as specific policy adjustments to implement the cut (country implementation plans), or as a combination of these approaches. These comprehensive commitments could relate to such matters as

- the modalities of the measurement and its application or the nature of the commitments in terms of specific policies;
- establishing a ceiling on support and protection, possibly the overall AMS, the depth and rate of reductions, the base years and applicable rates of exchange;
- the across-the-board application to all commodities and policies and any agreed conditions; these would reflect any agreements regarding permissible or non-permissible domestic policies and priorities with respect to altering or removing policies;
- the form of the binding or commitment in relation to GATT; these commitments would vary depending on the nature of the undertakings, i.e., in terms of an

AMS-type measurement or changes in specific policy instruments or categories of instruments;

- any special conditions to apply to developing countries; and
- the conditions for credits given for measures implemented by participating countries since the Punta del Este Declaration.

The undertakings in relation to the overall commitments to make substantial progressive reductions in agricultural support and protection would be more in the nature of agreed implementation actions rather than the traditional form of rules contained in GATT articles. However, it is conceivable that the commitments would include undertakings on access or subsidies that could be translated into GATT rules. For example, they could relate to the types of internal policies that are acceptable and those that are prohibited and hence form the basis of GATT rules. The negotiation of ceilings in support and protection could be expressed as bound levels, presumably as an annex to the GATT. Similarly, commitments expressed in AMS terms or as specific policy changes could be annexed and form an integral part of the GATT. However, these would represent commitments rather than GATT rules.

Governments could also agree on arrangements to continue the negotiation of commitments to reduce support and protection, and perhaps agree to convert all trade-affecting policies remaining after a phase-in period to tariff-equivalent forms and to bind them against further increases. Agreements could also be reached to establish procedures for regular notification of national policies, consultations, and a process of policy confrontation. The commitments applying to the completion of the reductions, adjusting policies to achieve trade neutrality, and exercising continuing review could also take a number of forms, such as

- establishing a continuing mechanism to monitor the level of support and protection, such as the AMS;
- notification and consultation procedures;
- procedures for dispute resolution;
- general commitments relating to maintaining trade neutrality with respect to existing or new domestic policy instruments; and
- special procedures to operate a continuing process of policy review and to settle differences.

Commitments of this nature could be subject to a continuing consultation and dispute settlement process, presumably conducted under GATT Articles XXII (consultation) and XXIII (nullification or impairment). Alternatively governments could accept commitments to maintain trade neutrality with respect to their policies, which could be expressed as formal rules (acceptable and prohibited policies) or as a GATT code. These could incorporate special consultative arrangements. It appears likely that undertakings relating to aggregate reductions of support and protection would deal primarily with commitments in the medium term as progressive reductions are

implemented. In the longer term, agriculture would become subject to the permanent rules of GATT, although no doubt there would be a need for interpretive notes and negotiated conditions for their application. The permanent rules would deal primarily with measures or policies and could be written with greater precision and be more readily enforced.

Negotiating An Improved Framework of Permanent Rules

The second track of the negotiations relates to developing an improved framework of permanent rules to discipline agricultural trade. Under the present rules of the GATT, agriculture receives special treatment primarily because governments in the past have insisted on the right to restrict imports and assist exports in order to maintain domestic programs of farm support. Among the special rules for agriculture in the GATT, the most important are those in Article XI (general elimination of quantitative restrictions) and Article XVI (subsidies). These contain exceptions and special conditions for agriculture that significantly reduce their effectiveness in dealing with trade disputes.

The general ban on quantitative import restrictions in Article XI does not extend to agriculture, provided domestic production or marketing is restricted. However, governments must provide a minimum level of access to imports relative to domestic production, so that imports are at least as large as would prevail in the absence of restrictions. Agricultural commodities are exempt from the general ban on export subsidies in Article XVI. However, governments that subsidize exports of agricultural or other primary products should not apply subsidies to gain more than an equitable share of world export trade. Both of these articles are proposing contractual tests, which are difficult to implement. Furthermore, the rules are based on quantitative commitments rather than price disciplines and greater market orientation, as called for in the 1989 Geneva TNC agreement.

But the difficulties in applying trade rules and disciplines effectively to agriculture extend far beyond the articles of GATT. Many countries maintain trade measures that are inconsistent with even these weaker GATT rules through waivers or under the terms of their accession to GATT. In the mid-1950s the United States demanded and obtained a waiver in order to apply import restrictions against commodities that interfere with the operation of its domestic farm programs. The European Community maintains a broad system of import levies and export restitutions (i.e., export subsidies) for agriculture that has never been covered effectively by GATT rules. Several other countries justify restrictions on agricultural imports on the grounds that the policies were in place when they joined GATT and thus have grandfather status. Many developing countries maintain highly protective import systems for agriculture that would be hard to justify even under the more relaxed GATT rules that apply to them.

For the most part successive rounds of negotiations in GATT have not led to a substantial reduction in barriers to trade in agricultural goods, except for the lowering of

tariffs. Countries have been unwilling to accept effective international disciplines with respect to the trade effects of their domestic agricultural support systems.

Nonetheless, it should be emphasized that the GATT provisions have placed some constraints on governments seeking to pursue even more trade-restrictive regimes for agriculture. As well, the GATT rules and procedures for dispute settlement have prevented a number of new barriers from being erected and forced the removal or reduction of others. Indeed, in the 1980s there has been an increase in trade disputes over agriculture in GATT, most of which have been resolved successfully in favour of more open trade. But a substantial part of agricultural trade occurs outside the effective disciplines of international trade rules, and in some cases, countries have chosen not to adopt the recommendations of GATT panels established to settle agricultural disputes.

The Geneva text commits governments to negotiate the establishment of strengthened and more operationally effective GATT rules and disciplines covering all measures that directly or indirectly affect import access, subsidies and export competition, and export prohibitions and restrictions. This suggests a comprehensive negotiation to reduce the overall impact of policy instruments on production and trade, together with the related negotiation of international rules to secure these commitments and to govern international trade in agriculture.

Turning to the second track, the negotiations could seek agreement on interpretive notes and supplementary provisions to bring all quantitative and non-tariff measures under the existing GATT rules and disciplines, including those maintained under waivers or other derogations and exceptions. Agreement could be pursued on conditions to ensure the full application of Articles II and XI to all access barriers and of Article XVI to all agricultural subsidies. Arrangements would be negotiated to ensure that the GATT rules reflect and underpin the progressive application of commitments achieved in the first track of negotiating aggregate reductions. There are many options for developing permanent rules to cover these commitments:

- All barriers to import access would be bound against increase; restrictions maintained under waivers, protocols of accession or other derogations would be brought under the appropriate GATT Article; these negotiations could also include the binding of maximum levels of protection.
- Tariffs, including any or all non-tariff barriers converted to tariff-equivalent forms, would be bound.
- All internal subsidies and the activities of state trading entities that operate to reduce imports would be subject to equivalent disciplines.
- The rules relating to protection, particularly Article XI as revised and elaborated, would be strengthened progressively to reflect the aggregate commitments undertaken to reduce support and protection, including gradually lowering protective barriers, raising bound levels of access, or lowering bound tariffs and other forms of protection.

- All export subsidies and internal subsidies having similar effects would be bound against increase and negotiations would be conducted on their elimination or on a schedule of reductions consistent with commitments accepted in the first track of the negotiations.
- Rules governing export prohibitions and restrictions would be strengthened to provide for non-discriminatory treatment of foreign suppliers in relation to domestic users.
- Mechanisms would be needed for the surveillance of commitments and the settlement of disputes arising from the strengthened GATT articles.

The Issues of Tariff Conversion and Rebalancing

The framework agreement includes the possibility of converting all non-tariff barriers into tariff-equivalent forms and binding them against increases. The United States is promoting this concept as a means of negotiating access barriers, as was achieved in bilateral agreements with Japan in 1988 to settle GATT disputes. This provides a technique for dealing with a complex range of border policy instruments and eventually negotiating their reduction. However, the tariff approach does not adequately capture the trade effects of internal subsidies that operate to reduce imports and expand exports, nor does it deal with the problem of direct export subsidies. Of course, subsidies could be handled with the AMS technique, provided agreements can be reached on a satisfactory way to describe and enforce the commitments. In addition, the conversion of all trade barriers to tariffs would result in extremely high tariff levels in some cases, which may be unacceptable. However, the use of tariffs in place of quantitative restrictions would encourage internal farm policies to become more responsive to international prices.

The European Community has for some time pursued the issue of rebalancing or harmonizing protection levels among various commodity sectors. This reflects their difficulties in handling imports of oilseeds, feed substitutes and proteins in the CAP system when tariff-free access is bound in GATT. The concept of raising barriers to imports as part of the GATT negotiations is strongly opposed by the United States and the Cairns Group countries. The AMS approach converts both support and protection into one measurement and provides a basis for achieving some rebalancing between sectors as the overall levels are reduced. The use of tariff conversion does not deal adequately with subsidies and hence does not provide the same opportunity for balancing or harmonizing support and protection levels. There is a risk that the debate over these two approaches will delay serious negotiations on agriculture this year.

Negotiating Agricultural Subsidies

A key aspect of the negotiations will be reaching agreement on reductions in agricultural subsidies and other forms of support that affect trade. It is evident that agricultural protection can be lowered or removed only if internal support mechanisms are reduced.

The AMS approach offers an across-the-board technique to negotiate progressive reductions in both support and protection, thus avoiding policy-by-policy or commodity-by-commodity negotiation, which has not been successful in the past. But so far there is no consensus on which government subsidies are trade-distorting and which are not. Indeed some argue that all forms of agricultural transfers have an influence on production and trade. However, there is no doubt that some commodity programs have a greater effect on trade than general forms of support. Governments are likely to insist that the more distorting policy instruments be modified or removed as part of an agreement to implement progressive reductions in farm support and protection.

Also, the negotiations on agricultural subsidies will have to be integrated with the separate negotiations on anti-dumping and countervailing duties taking place outside the agricultural group. These negotiations will seek to determine those subsidies that should be prohibited, those that are not prohibited but may be subject to countervail and should be reduced, and those subsidies that are acceptable. In order to proceed with agricultural subsidies governments may seek to agree on the types of farm programs that are regarded as trade-neutral (decoupled). An illustrative list of agriculture policy instruments arranged according to their use and apparent trade-distorting effects was provided in *World Agriculture Trade: Building a Consensus*.[3]

A useful precedent in reaching agreement on relative levels of farm support is contained in the Canada-U.S. Free Trade Agreement (FTA). Canadian Wheat Board import permits for wheat, oats and barley are to be removed when the overall level of government support in both countries for each grain becomes equivalent. Canada reserves the right to require an end-use certificate for imports or a certificate for seed or the denaturing of grain for feed use, to avoid the mixing of grain varieties and qualities in the domestic system. Procedures for determining the levels of government support, making the determination, and settling differences are set out in the FTA. These procedures use an aggregate measure of support known as the Producer Subsidy Equivalent (PSE) to compare relative levels of government transfers through programs considered to have an influence on cereal production and trade. The two administrations have already worked through the procedures for 1989, and the results were released recently. The Canadian government announced on June 6, 1989, that import permits for oats and oat products will no longer be required. Any shipments of U.S. oats will require end-use certificates, denaturing and seed certificates to maintain quality control for Canadian oats.

It is useful to examine the results of the recent determination of relative support levels for cereals. The calculations of farm support for wheat, oats and barley in each country are shown in Table 1 and Table 2. These contain the total government support by program, as identified in the Agreement, and the share of producer returns, including direct payments, that this represented for 1986-87 and 1987-88. This shows that

government support provided the following percentage share of producer returns in the past two crop years:

	Wheat	Oats	Barley
Canada	46.28	11.09	50.23
U.S.	61.62	8.74	72.49

Import licences for U.S. wheat and barley entering Canada will still be required. A benefit of such calculations and discussions is to expand the understanding among farmers and policy officials of comparative support levels. Too often interest groups focus only on the competitor's programs in claiming unfair trade practices. This experience also demonstrates that it is possible to use an aggregate measure to reach agreement on relative levels of farm subsidy support.

Successful negotiations based on the AMS approach and agreements on prohibited and acceptable agricultural subsidies would allow the GATT rules relating to subsidies to be revised to eventually apply fully to agricultural products, including a ban on export subsidies. The objective would be to remove the exceptions for agriculture under the rules and to negotiate conditions for bringing agricultural trade fully under their disciplines.

Guidelines for Negotiating Rules

The major focus of the negotiating efforts in the agricultural component of the Uruguay Round will be on ways to reduce the level of agricultural support and protection directly and to reach agreement on related rules and disciplines to limit or remove exceptional treatment for agriculture. But clear and enforceable GATT rules are essential to ensure that progress in negotiating greater access and reducing trade-distorting subsidies is achieved and made secure. All policies maintained under waivers and exceptions, along with policies not currently covered, would be brought under the appropriate GATT articles. New rules and commitments will be necessary to deal with barriers to access, such as variable levies, minimum import prices and voluntary export restraints, that are not now covered adequately. These rules may include such concepts as maximum and bound levels of protection for all tariff lines, ceilings on import levies and the conversion of trade barriers to tariffs.

The rules and separate commitments to be negotiated will also cover subsidies and instruments of export competition, including internal support measures, that affect trade. Direct budgetary assistance to exports and other forms of export assistance are to be addressed. Although subsidies may be dealt with by rules, this may also be achieved by entering into commitments to reduce or remove them. Export prohibitions and restrictions are to be covered, presumably by the negotiation of additional disciplines under the rules.

The GATT rules and disciplines covering sanitary and phytosanitary regulations are to be pursued through a work program aimed at strengthening the disciplines, including the procedures for notification and dispute settlement. The long-term reform program will also require stronger multilateral surveillance, including rules and procedures for resolving disputes effectively.

Even if governments are willing to accept the progressive application of stronger GATT rules to their agricultural policies, it is evident that compliance with the rules will be difficult to achieve unless agreement is reached on parallel reforms of domestic support programs. There is a significant risk that a rules-only approach would bog down as governments sought to maintain policies of protection for their more sensitive sectors. On the other hand, the negotiation and implementation of aggregate commitments progressively to reduce or remove policies that distort trade may be difficult on its own, unless governments are subjected to the disciplines of clear rules that can be enforced. In the absence of effective rules to guide the transition process, as well as effective procedures to settle disputes during the period of adjustments, the reform program of progressive reductions in agricultural support and protection could break down. This suggests that a combination of an aggregate approach to reduce domestic support programs that distort trade, together with the negotiation of stronger rules and their progressive implementation, may offer the best prospects of success. A two-track system as set out in the framework agreement to achieve long-term reform and a permanent framework of rules that apply adequately to agriculture appears necessary for a successful negotiation.

The framework agreement leaves open many aspects of the negotiation of stronger GATT rules and disciplines for agriculture. In the key areas of negotiating improved access and the reduction or elimination of trade-distorting subsidies, much work is required. The revised rules must be specific enough to provide clear guidance to governments regarding the domestic programs that are acceptable in relation to their trade effects. They must be written in precise and enforceable language that would allow for the effective functioning of the GATT dispute settlement process. In addition, the dispute settlement procedures must be transparent and effective, provide for timely decisions, and be balanced, fair and not subject to the veto of affected GATT members.

Several steps and options may be useful in negotiating stronger rules. Following are some guidelines that may assist governments in structuring the negotiation of a permanent framework of rules to apply to agriculture:

- The objective of negotiating the rules is to bring all measures affecting agricultural trade fully under a permanent framework of GATT rules that apply equally to all contracting parties.

- The rules should ensure that agricultural policies become more responsive to international market signals and less trade-distorting.

- All forms of import restrictions must be brought under the disciplines of Article II and Article XI or equivalent rules, and all tariff lines should be bound against increases.

- Any exceptions to the access rules regarding the prohibition of quantitative and other import restrictions must include a binding of the existing access and a program to remove the barriers progressively.
- All forms of subsidies affecting export competition must be brought under the disciplines of a strengthened Article XVI or equivalent rules aimed at removing or limiting their effects on trade.
- Exceptions to the Article XVI general ban on export subsidies, and any other subsidy having equivalent effects, must include bound ceilings on subsidies and a program to remove the subsidies progressively.
- The rules relating to export prohibitions and restrictions will be strengthened.
- State trading enterprises will be subject to the disciplines of the articles relating to access restrictions, export competition and export prohibitions.
- An extended period of transition may be required but a deadline for full application of the rules should be established.
- Any exceptions from the permanent rules should be treated as temporary or transitional and be subject to stringent conditions, including a fixed period for the exception, a phase-out schedule and regular review procedures.
- All non-tariff barriers remaining after an agreed date should be converted to tariff-equivalent forms and be bound in GATT; the negotiations should provide for maximum bound levels of protection.
- Surveillance and dispute settlement procedures must be strengthened and made operationally effective to ensure the implementation of all undertakings and the speedy and fair resolution of all trade disputes, including the removal of the veto of affected GATT members.

Prospects for Success

At this time it is not possible to assess the prospects for success in the agricultural negotiations, although the stage has been set for a major result. The United States continues to press for the virtual elimination of farm support programs and agricultural protection. Their recent strong advocacy of the tariffication approach to deal with border measures leaves open their intentions regarding the reduction of their own internal and export subsidies, which have significant effects on trade volumes and international prices. It remains to be seen to what extent U.S. farm groups, particularly sugar and dairy producers, and ultimately Congress will support the aggressive administration position. The United States is now proceeding to develop the 1990 Farm Bill, and so far it appears likely to resemble the 1985 version. It is expected to provide greater flexibility for farmers to respond to market signals and to continue to adjust support levels toward

world markets. The emphasis on competitiveness will apparently be maintained, although budget savings will be a consideration. Of course, changes to the 1990 Act can be introduced following the completion of the Uruguay Round. However, nothing in the proposals so far will prevent the trade tensions of the 1980s from continuing.

The Pacific Rim countries, particularly the members of the Cairns Group, have aggressively promoted a major move toward freer trade and policy reform in agriculture. A strong multilateral trading framework with effective GATT rules is of great importance to economic development in the region. More open markets for agricultural commodities and processed products are vital to this development.

In Canada, the government is reviewing its farm programs to ensure that they help farmers to become more responsive to market developments and to reduce the *ad hoc* nature of farm support. The emphasis appears to be on competitiveness on an international basis, backed up by low-slung stabilization programs that focus on income objectives rather than commodities. There are some indications that greater flexibility may be introduced in supply-managed systems, in part to encourage more processing for export. Canadian agriculture has little choice but to base its future development on the international and continental markets. Thus Canada has an important stake in a successful outcome to the agricultural negotiations. It therefore shares the overall objectives of the other Cairns Group countries in insisting that a major result for agriculture is essential in this GATT Round, including effective disciplines on the use of agricultural subsidies.

The European Community, the Nordic countries, and other Western European countries are also committed to negotiate substantial reductions in agricultural support and protection, but they have given no clear indications of their long-term objectives. It is evident that the Community, and no doubt the Nordic countries, will insist on retaining a level of border protection for agriculture and the flexibility to operate two-price systems. These countries are likely to insist that subsidies and other forms of support be reduced before protection is brought down and strengthened rules are applied at the border. The Community will press for the rebalancing of support and protection between commodity groups.

Japan supports a major negotiation on agriculture but continues to insist on the right to protect the production of basic foodstuffs, particularly rice. Their interventions ensured that the Geneva TNC text calls for disciplines on export embargoes. Japan has made remarkable progress in dismantling some of its barriers to agricultural trade, but recent political events appear to threaten their support for trade liberalization in agriculture.

The developing countries, particularly the exporters that are active participants in the Cairns Group, generally support the negotiations. In many ways these countries are the largest losers from the unsatisfactory trading situation for agriculture and have the most to gain. For the developing countries that are net food importers it has been agreed that any negative effects of the reform process must be taken into account in the negotiations.

The two-track approach provides a basis for reconciling these national objectives and producing a more open and less distorted trade situation for agriculture backed up with effective trade rules. Agriculture holds the key to a successful Uruguay Round, but the negotiations may founder if governments fail to mount the political will to use it. The countries of the Pacific Rim have an important stake in a positive result for agriculture in the Round and can exert considerable influence in the negotiations to achieve an acceptable outcome.

Notes

1. For a more complete discussion of the issues facing world agriculture, see W.M. Miner and D.E. Hathaway, eds., *World Agricultural Trade: Building a Consensus*, (Halifax and Washington: Institute for Research on Public Policy and Institute for International Economics).

2. Chairman's Text on Agriculture, Trade Negotiating Committee, GATT, April 8, 1989.

3. See *World Agriculture Trade: Building a Consensus*, pp. 104-106.

Table 1: United States Government Support for Wheat, Barley and Oats, 1986 and 1987[1]

Item	Wheat		Barley		Oats	
	1986	1987	1986	1987	1986	1987
1. Level of production (MMT)	56.92	57.36	13.29	11.53	5.61	5.43
2. Producer price ($/T)	88.61	95.84	74.77	85.20	83.92	111.62
3. Value production ($ M)	5,044.35	5,496.83	933.91	982.29	470.63	605.96
4. Direct payments ($ M)	3,750.78	3,129.09	392.96	385.42	29.24	18.87
5. Adjusted producer value ($ M)	8,795.13	8,625.92	1,386.86	1,367.71	499.87	624.83
6. Policy transfers to producers ($ M)						
A. Direct payments (1+2+3+4+5)	3,750.78	3,129.09	392.42	385.42	29.24	18.87
1. Payments of the CCC (a+b+c)	3,799.07	3,279.06	349.39	334.80	37.90	26.31
a. Deficiency payments	3,456.84	3,279.06	341.60	301.81	30.07	18.80
b. Disaster payments	126.96	0.00	1.45	0.00	6.28	0.00
c. Diversion payments	215.27	0.00	6.34	32.99	1.55	7.51
2. CCC storage payments	170.33	144.75	29.60	30.58	0.66	0.53
3. Conservation Reserve Program	11.95	102.47	2.99	26.88	1.63	12.58
4. Acreage Reduction Program	(355.46)	(479.54)	0.00	(14.61)	(12.28)	(21.13)
5. Certificate premiums and discounts	124.89	82.35	10.98	7.77	1.33	0.59
B. Other support ($ M)	1,677.37	2,178.27	635.75	582.97	22.74	25.35
6. OOC loan forfeiture benefits	487.37	105.51	24.30	-3.05	0.08	-0.16
7. Price enhancement	457.80	1,433.00	495.44	481.10	0.00	0.00
8. Advance payments benefits	3.78	9.65	0.48	1.25	0.05	0.14
9. Crop insurance	48.76	1.64	12.00	2.28	0.56	0.25

Table 1: (Cont'd)

Item	Wheat		Barley		Oats	
	1986	1987	1986	1987	1986	1987
10. Government service programs (1...11)	93.92	103.56	16.80	17.00	7.52	9.50
1. Federal grain inspection	0.62	0.35	0.12	0.06	0.06	0.04
2. Research and extension	43.03	44.05	8.54	7.86	4.05	4.86
3. Irrigation	3.65	4.18	1.82	2.22	0.18	0.24
4. Inland waterways freight	16.57	17.60	0.36	0.38	0.60	0.63
5. Conservation	22.09	27.34	4.38	4.88	2.08	3.01
6. Rail freight	0.65	0.79	0.14	0.13	0.01	0.01
7. Low-interest loans for rail	1.42	1.62	0.30	0.26	0.02	0.02
8. Cooperator export programs	0.89	1.07	0.18	0.19	0.08	0.12
9. Marketing services	0.61	0.64	0.12	0.11	0.06	0.07
10. Plant disease and pest control	4.26	4.59	0.84	0.82	0.40	0.51
11. Targeted export assistance	0.13	1.34	0.00	0.09	0.00	0.00
11. CCC commodity loans	376.48	308.47	45.73	42.60	0.88	0.39
12. State budget outlays	106.00	106.00	21.03	21.03	9.96	9.96
13. Farm credit programs	103.27	110.43	19.97	20.77	3.70	5.27
7. Total government support (A + B)	$5,428.15	$5,307.36	$1,028.71	$968.39	$51.98	$44.22
8. Government support	61.72%	61.53%	74.18%	70.80%	10.40%	7.08%
Average for 1986 and 1987		61.62%		72.49%		8.74%

May 26, 1989

1. Pursuant to Article 705 and Annex 705.4 of the United States-Canada Free Trade Agreement. Calculations made with unrounded data.

Table 2: Free Trade Agreement Calculations Canada Grains

	Wheat		Oats		Barley	
	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88
A. Production (million tonnes)	31.38	26.00	3.30	3.00	14.57	14.00
B. Producer Price ($/t)	116.36	120.03	75.60	105.84	64.61	58.33
C. Direct Payments ($m)	844.70	673.60	24.98	6.32	282.89	317.14
D. Adjusted Producer Value ($m) (AxB)+C	4,495.73	3,794.38	274.46	323.83	1,224.25	1,133.78
Direct Payments ($m)						
1. Agricultural Stabilization	25.00	0.00	1.01	0.06	7.26	7.60
2. Western Grain Stabilization	590.18	501.66	9.60	15.43	155.55	106.47
3. Special Canadian Grains	568.50	482.69	33.19	22.80	184.49	256.54
4. Provincial Stabilization	5.47	10.56	4.76	5.56	14.56	15.00
5. Income Foregone Adjustment	(344.45)	(321.32)	(23.37)	(37.54)	(78.97)	(68.48)
Subtotal	$844.70	$673.60	$24.98	$6.32	$282.89	$317.14
Other support ($m)						
6. Canadian Grain Commission	0.12	(3.15)	0.00	(0.06)	0.03	(0.62)
7. Wheat Board Pool Deficit	-	-	-	-	110.50	-
8. Domestic Price Gap	276.72	248.88	0.00	0.00	6.44	30.00
9. Advance Payments	14.72	16.58	0.37	0.41	3.31	3.73

Table 2: (Cont'd)

	Wheat		Oats		Barley	
	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88
10. Crop Insurance	53.99	44.80	1.30	0.96	1.87	7.31
11. Western Grain Transportation	568.46	528.11	9.89	9.09	175.81	102.31
12. Prairie Branch Line Rehab.	65.96	62.69	0.85	0.47	20.27	8.38
13. Research Expenditures	14.73	15.61	0.53	0.53	8.25	5.36
14. General Support - Federal	20.35	7.77	0.36	0.15	5.67	1.53
15. Provincial Expenditures	110.16	100.84	2.84	2.74	38.81	24.33
16. Farm Credit Programs	92.34	75.92	1.40	1.03	23.61	12.04
Subtotal	$1,217.55	$1,098.04	$17.54	$15.32	$394.57	$194.37
Total Government Support	$2,062.25	$1,771.64	$42.52	$21.64	$677.46	$511.51
Government Support Formula	45.87%	46.69%	15.49%	6.68%	55.34%	45.12%
Two Year Average		46.28%		11.09%		50.23%

Comments on Negotiating Agriculture

David Gamble

Before I follow up on the presentation from Bill Miner, let me comment briefly on the opening observations made by the chairman about the status of various Canadian provinces. Everybody, including inland provinces, seems to be vying for a position as a Pacific province. Even if you go as far east as Newfoundland, as we heard last night, you are almost looping around and becoming a Pacific province. I would simply like to add that there is not too much doubt, I am sure, about Canada's position; there is no doubt either about New Zealand's view of the importance of the Pacific for the immediate and longer-term future.

I read Bill Miner's paper with a great deal of interest. It was very salutary to have such a clear, succinct paper and accompanying presentation. It is pretty much on-line with the sorts of points we—i.e., New Zealand—would want to have made in a paper of this type.

As a second general observation, Miner has accurately reflected the situation that all the negotiating partners find themselves in at this time. We now have, following the GATT mid-term review, a political framework and an agenda for the negotiations. But the concrete results are yet to come. In fact, Bill pointed out the complexity of the matter in relation to links within the Uruguay Round as a whole, where there are 15 negotiating groups involved. We are at the stage where we must get down to the nub of the issues. I mentioned at the PECC conference a couple of days ago the need to separate the wheat from the chaff, but I hesitated a little saying this because it might seem like unwanted interference in the grain trade policies of our North American negotiating partners. This case does, though, illustrate our situation very well. We have to get down now to the really hard issues. That is the problem for the negotiators, in the short 18 months now

left, in what Mr. Carlisle pointed out yesterday is the largest and most complex GATT negotiation ever held.

Going back to Bill Miner's comment that the political framework has been set. That still requires many hard choices, even though as Bill said we have been at it now in agriculture for 40 years. There is, however, some glimmer of hope in the dawning realization that some modifications to domestic programs are necessary as well as improvements to GATT rules. And that of course is all part of the building of consensus as his paper outlined.

All sorts of difficulties, not the least being political problems at home, underlie this continuing search for consensus. The search has intensified since the Punta del Este meeting, the Montreal mid-term review, and the April accord in Geneva. A key example of this in Miner's paper concerns the European Community, which has already gone as far as taking action to contain surpluses to some extent—putting a lid on them, as he said. But the all-important question of reform of the CAP in its essentials and Community preference, for example, has not yet been tackled. I believe we will see this highlighted in the negotiations as the tariffication concept proceeds, because that is going to get right at the heart of the variable levy system. But many countries will have domestic problems, not just the Community and other major trading entities. As pointed out in Bill's paper, even the Cairns Group members have farm sectors where some elements are not internationally competitive, and certain of these countries will be faced with hard choices as well

Bill Miner's paper characterized the twin-track approach of the negotiations, i.e., (a) reducing support and protection, and (b) dealing with the rules necessary to lock these procedures in place. I think he quite correctly described this process in relation to track one, reducing support and protection, as being a negotiation on commitments, directed toward the reduction of subsidies and their eventual elimination. Modification of domestic support policies would be a part of the process, too, all perhaps under the framework of the aggregate measure of support (AMS) approach. The AMS will present a great deal of complexity in relation to its negotiation, not the least to do with the issue of decoupling, that is to say, separating what is a trade-distorting support measure from what is not a trade-distorting support measure. Another ominous problem is rebalancing, with one or other participant looking perhaps to adjust particular elements of support within the overall aggregate measure. So all these issues have to be negotiated through, and we are hardly even at the beginning of this process.

On rules, it was good to see Miner go right to the heart of the problem in specifying Articles XI and Article XVI, the former relating to quantitative restrictions and the latter to export subsidies. They should be dealt with head-on. These Articles have allowed all kinds of shady protective practices to become quasi-legitimate in terms of the GATT. We have suffered so much of this backsliding in agriculture during the history of the GATT. This is amply demonstrated by the fact that even the weak and permissive rules on agriculture exemplified in Articles XI and XVI are paralleled by waivers and various grandfather measures, even outright GATT-inconsistent measures. The challenge will be to revise these rules and capture the commitments that have been made

in the negotiations, to reduce support measures, eliminate GATT-inconsistent measures, and keep them that way.

Bill Miner suggests in the paper that we might, as an objective, try at least to get back to the full application of Article XI and Article XVI. I would like to see a radical restructuring of these Articles. I am not so sure that getting back to full application of Article XI, for example, would help very much, because Article XI actually legitimizes the continuation of various import control measures that have largely bedeviled attempts, our attempts anyway, to diversify access to world markets—not the least being access to Canada for dairy products, I might add, over quite a number of years.

On the treatment of subsidies, he gave the very interesting concrete example of the treatment of grains in the Canada-U.S. Free Trade Agreement, where import permits are given for particular grains only when the overall level of government support in each country becomes equivalent. Accepting this would tie in levels of government support to producers all they way up to about the 70 per cent level, I noted, in the case of barley. Though dairy was not used in the example, I believe there are support levels going up to about 80 per cent in that sector.

Now I am not suggesting that a negotiation would end up cementing those sorts of levels in place, but I think it illustrates the sorts of problems we are dealing with, and if we were able to isolate these things and then negotiate them down and out, would be doing very well. In that context, how wonderful it was to hear Bill say that we should not wait around until the end of the Round before we tackle these sorts of problems, these domestic issues—that we should start looking at them now, so that they become part and parcel of the negotiation and we are ready to cement them in place at the time the results are achieved at the end of the Round.

It was encouraging to hear him say that the United States and the European Community want serious results out of this. We all certainly want serious results, and the correct method of approach will be to work down those two tracks—reduction of support measures and formulation of rules. I think there will be a kind of symbiosis between these two approaches. They are not completely separate tracks; they are parallel, and they will certainly interweave as we go along. We could apply this thought to the principle of tariffication, because when we move to the tariffication of non-tariff barriers—bringing those tariff measures down, thereby introducing a more market-oriented approach, and locking all this in with new disciplines and rules—that in itself will provide a good rationale for the reduction of internal support measures. Action on one track will thus have positive consequences and effects on the other.

Bill Miner said that many aspects are still open, such as market access and the decoupling concept, and it is quite true that much work has yet to be done. However, the guidelines have been laid down and the objectives are clear. Where will we get to? Can we quantify the benefits? We keep asking ourselves this question, and in particular, our politicians are being asked this question by our farmers. First of all, the treasuries of some countries will be relieved of a great burden of support. Not ours in New Zealand, which does not get involved, but for others such as the EC it will be a great relief for their treasuries and finance ministries. But even more, the realization of these negotiating

objectives will provide the greater security that our farmers and our farming sector want and need. That is the all-important touchstone, enabling them to plan their future business on the basis of a fully market-oriented system in agricultural trade.

Anti-Dumping Action: How the GATT is Threatened

Brian Hindley
Trade Policy Research Centre

Legislation aimed at 'unfair' trade practices is being manipulated for protectionist purposes. Moreover, this manipulation supercharges the voluntary export restraint (VER) system. The apparently inexorable spread of VER arrangements is widely regarded as the major threat to the survival of the GATT as an effective control on governments' interventions in international trade. But the *combination* of unfair trade action and VERs creates a much greater threat than that posed by either one separately.

Unfair trade legislation has a broad and expanding scope. Anti-dumping duties can be imposed on goods said to have been dumped and countervailing duties on goods said to have received subsidies. The United States has Section 301 actions and the European Community (EC) has its new Commercial Policy Instrument. Now the United States has Super 301 actions. No doubt the EC will soon have its own version of that provision.

In this paper, however, I will focus on anti-dumping action and, in particular, on its recent development as a protective device by the EC. My focus on the EC is not meant to imply that the EC is the only offender in this regard; that is emphatically not the case (Palmeter, 1989). One reason for concentrating on the EC is simply that I know the practices of the EC best, and those practices illustrate well my general proposition that anti-dumping action threatens the world trading system.

I do believe, however, that recent developments in the EC's use of anti-dumping action for protective purposes give it a claim to leadership in this particular area of protectionist technique. That is not the typical situation in trade policy. Usually, the United States leads and the Community follows. There is some interest in enquiring why the position in anti-dumping action should be different. Moreover, the answer is directly relevant to my more general thesis.

In terms of contemporary trade policy, the European Commission is confronted by a major difficulty. To negotiate official Community-wide VERs, the Commission needs the support of a sufficient number of member states. The Commission's difficulty is that it usually cannot persuade that number to accept Community VERs *per se*—the Federal Republic of Germany, Britain, the Netherlands and Denmark typically oppose Community VERs and command enough votes in the Council to block them.[1] Hence, solving EC trade problems through the negotiation of VERs (apart from textiles or steel) is not a route that is typically open to the Commission.

The power to pursue an aggressive trade policy is very important to the Commission. Lacking that power, the Commission must face the possibility that EC producers seeking protection will turn to the governments of the member states to supply it. That threatens the Commission's control of EC trade policy. It also threatens major parts of the 1992 project. The Commission therefore has a powerful motive to develop alternatives to VERs.

The EC member states that oppose Community VERs will agree to action against dumping. Hence, I conjecture, the Commission has developed its anti-dumping powers to compensate for its inability to obtain authorization for the negotiation of VERs.

Nevertheless, whether the EC is the world's worst (or best, depending upon your standpoint) manipulator of anti-dumping legislation is not in any way central to my argument here. The case that anti-dumping legislation is manipulated for protective purposes, and that more effective control of the use of such legislation is vital to the survival of the GATT, does not in any way depend upon which government is the most effective manipulator of it. Moreover, in matters involving the disguise of protection as 'normal' policy, the learning process is very rapid. What the EC does today, there is a good chance that others will do tomorrow.

The use by the EC of the suspect anti-dumping methodologies discussed here has so far been largely against exporters from East Asia. The Commission claims to have discovered dumping margins of up to 33.89 per cent on ball bearings from Singapore,[2] up to 45.04 per cent on tapered roller bearings from Japan,[3] up to 76 per cent on electronic typewriters from Japan,[4] up to 31.9 per cent on hydraulic excavators from Japan,[5] up to 20.6 per cent on electronic scales from Japan,[6] up to 40.6 per cent on photocopying apparatus from Japan,[7] up to 53.2 per cent on outboard motors from Japan,[8] up to 86 per cent on dot-matrix computer printers from Japan,[9] up to 22.01 per cent on daisy-wheel computer printers from Japan,[10] up to 23.7 per cent on video cassette recorders from Japan and the Republic of Korea,[11] and up to 59.35 per cent on video cassette tapes from Hong Kong and Korea.[12]

Dumping in the GATT

Dumping, as traditionally defined, occurs when goods are sold abroad for a lower price than the seller charges for the same goods in his home market. The seller in a dumping case is always a specific company, not a country or a government. Thus, anti-dumping

action—for example, the imposition of anti-dumping duties—is always against specific companies. Different companies from the same country often face different anti-dumping duties on similar products; sometimes some companies based in a country face anti-dumping duties while others, similarly based, do not.

Dumping is not forbidden by the General Agreement on Tariffs and Trade. No duty to prevent dumping is placed upon the government of a territory in which dumping firms are resident. Nor does the GATT require the government of a country importing dumped goods to take any action.

Article VI of the GATT authorizes (but does not require) the imposition of anti-dumping duties on dumped imports. Article VI also contains rules on the investigation of allegations of dumping and rules concerning the use by governments of anti-dumping duties. These rules are elaborated in the Anti-Dumping Code agreed in the course of the Tokyo Round of multilateral trade negotiations.[13]

The importance to the GATT of such rules is difficult to overestimate. Were GATT members allowed unrestricted access to anti-dumping action, under definitions and procedures decided by themselves, much or all of the rest of the Agreement would be deprived of effect.

To take one instance, the principle of non-discrimination—that is, the rule that like imports should be treated alike, regardless of their country of origin—is generally acknowledged to be a cornerstone of the GATT. But if each GATT member could devise its own definition of dumping and take whatever action it deemed appropriate against dumpers, a government could discriminate between similar imports from different sources merely by claiming that imports from one source were dumped.

Moreover, the process of bargaining in GATT, which has led to continual tariff reductions since 1948, would be fatally undermined. To negotiate reciprocal reductions in levels of protection with a government that can reimpose protective barriers at a whim, in the form of anti-dumping duties, cannot be a very useful activity—even for another government in the same position.

GATT authorization of anti-dumping action thus poses a threat to world trade and the world trading system. Article VI of the GATT is intended to *control* anti-dumping action. It is a container for an evil genie. The subject of this paper is the escape of the genie—and how it might be put back into the bottle.

According to GATT Article VI(1), dumping occurs when the price of a product exported from one country to another:

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
(b) in the absence of such domestic price, is less than either
  (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
  (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling costs and profit.

And under Article VI(2):

> In order to off-set or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping of such product.

Manipulation of Dumping Calculations

At first glance, this all sounds quite straightforward. But a moment's reflection suggests that the straightforward words conceal matters of great difficulty.

What, for instance, is a comparable price in the ordinary course of trade? Most products are sold at a number of different prices, which depend upon a variety of circumstances. The prices of exported products are likely to vary for similar reasons.

Moreover, products are marketed differently. Sometimes they go direct from the manufacturer to independent wholesalers, sometimes to sales companies associated with the manufacturer, and sometimes direct to retailers. Different levels of transaction are associated with different prices. Marketing organizations have overhead costs or undertake advertising; such costs cannot easily be allocated between products.

What is a like product? Products designed for one market are very often different from a similar product designed for another. What is a "reasonable addition for selling costs and profit"?

Such problems would raise difficulties for an anti-dumping authority doing its best to conform to the *spirit* of the GATT. But if one conceives of an anti-dumping authority that is less concerned with the spirit of the GATT than with protecting domestic interests against foreign competition, the problems take on a quite different complexion. They then become a field of freedom within which an anti-dumping authority can select its methods of calculation so as to obtain protective effects without—perhaps—violating the *letter* of the GATT.

The Anti-Dumping Code is supposed to limit the possibility of abuse. Nevertheless, the sum total of its guidance on these issues is that:

> In order to effect a fair comparison between the export price and the domestic price in the exporting country . . . the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made as nearly as possible at the same time. Due allowance shall be made in each case, on its merits, for the differences in conditions and terms of sale, for the differences in taxation, and for the other differences affecting price comparability.

This sparse direction is not enough to limit the scope for abuse. Abuse of anti-dumping legislation is usually hidden in the technical details of dumping calculations, and discussion of them therefore involves equally detailed technical discussion (e.g., Hindley, 1988; Palmeter, 1989). Two examples will illustrate this.

The first turns upon the fact that products are not typically sold at a single price to all buyers, but at varying prices. A natural solution to this problem is to take an average of actual prices. That is what will be done in the calculation of the home market reference price. But neither the European Commission nor the United States follows that procedure when calculating the export price.

The Commission, for example, makes the proposition that negative dumping—export prices that are *above* the home-market reference price—has no legal existence. In the Commission's view, it follows that 'negative dumping prices' cannot be used to offset 'dumped' prices. Hence all export sales made at a price *above* the home-market reference price are treated *as if they had been made at the reference price*. The Commission then calculates an 'export price', which is an average of the reference price and the actual prices of export sales if that export price is less than the reference price. This average is the 'export price' that is deducted from the reference price to calculate the dumping margin.

This calculation clearly facilitates the discovery of dumping. Suppose, for example, that there is exactly the same mean and dispersion of prices in the home market and the export market. Application of the rule that negative dumping will be ignored means that dumping will be discovered. The reference price will be calculated as a simple average of all actual home-market prices, while the export price will be calculated by chopping off the excess over the reference price of all actual export prices—hence, 'export price' will be below the reference price. Indeed, when there are *any* export sales at less than the home-market reference price, the 'export price' as calculated by the Commission *must* be below the home-market reference price: the Commission (and the United States, which uses similar procedures) will discover 'dumping'.

The second illustration stems from the fact that the nature of anti-dumping action has changed. Anti-dumping action used to deal primarily with products such as bulk chemicals and foodstuffs, which have a relatively simple marketing structure. It still deals with such things, but it now also focuses on products with a much more sophisticated marketing structure. These sophisticated marketing chains—as, for example, in consumer electronic products—provide much scope for abuse.

A major problem arises with products sold on the domestic market of the exporter through marketing companies that are associated with the manufacturer. There is then a genuine problem; the ex-factory price recommended by the Code for comparison of the domestic and the export price is not at arm's length and does not necessarily give a reliable indication of the true price. There are reasonable grounds for rejecting such a price between associated companies and taking instead the price of the first arm's-length sale.

In this case, EC procedures are more heavily biased than those of the United States—though, interestingly, the actual words of the Basic Regulation of 1984[14] are consistent with an intention to apply the (controversial) U.S. procedure of the ESP cap. Paragraph 10(c) of those regulations says that "... allowances generally will not be made

for *differences* in overheads and general expenses, including research and development or advertising costs" (emphasis added).

The Commission, however, has managed to persuade the European Court of Justice that these words should be interpreted to mean that *no* allowances should be made for overheads or advertising on the home market of the exporter. The Commission will therefore deduct such expenses on the export side of its calculation, but not in its calculation of the home-market reference price. This position has been formalized in the new EC regulations.[15]

The effects of this methodology appear most sharply when the Commission constructs a home-market reference price. Its objective is to obtain an ex-factory price, and it will in fact construct such a price directly. But it does not treat *that* construction as the ex-factory price. Instead, it uses it as a basis to construct the price at which sales would have been made to the first independent buyer, had there been such sales. It will add on selling expenses, advertising, overheads, profit. And then, to obtain the ex-factory price that it will use as a reference price, it will deduct from this total *only* "directly related selling expenses"—typically a small fraction of what it has itself added on (Hindley, 1988). It will therefore finish up with an ex-factory price that is larger—sometimes much larger—than its own initial direct construction of that price.

Calculation of dumping margins is difficult, wide open to manipulation and abuse and, certainly in the EC, non-transparent. The way dumping margins are calculated leaves vast scope for scepticism. Maybe the XYZ Corporation *is* dumping in the EC—but that the European Commission says it is very poor grounds for believing that it is.

Anti-Dumping and Trade Policy

The tricks and devices noted above, and others, mean that a very wide range of products can be hit by anti-dumping duties, whether or not they are in objective terms dumped. That is a very powerful weapon in the hands of those who control the anti-dumping machinery—and, potentially, in the hands of domestic producers seeking protection.

One use the EC has made of this power is to solve the Article XIX problem. In the Tokyo Round, the EC tried very hard to amend Article XIX (the GATT safeguard against sudden surges of imports) so that it gave importers the right to act unilaterally and selectively against "disruptive imports"—that is, imports from new and efficient suppliers. The effort was not successful.

But the European Commission has now learned to use anti-dumping action to create the situation that the EC failed to get in the Tokyo Round—without having to go to the trouble of seeking the agreement of other GATT members. Christopher Norall, a Brussels-based lawyer, has commented (Norall, 1986) that "in a certain number of specific contexts, dumping procedures have been developed by the Commission of the

European Community to the point where they can in effect do the work of 'safeguard' procedures."

The EC position and actions have a certain protectionist logic. Article XIX will not allow discrimination between different *countries*. Article VI, on the other hand, allows discrimination between different *companies* (subject only to the requirement that they can be found to have been dumping by different margins). To those convinced of the righteousness of their cause and of the 'need' to discriminate, the question will inevitably occur: why not shift the action from Article XIX to Article VI (even if that requires some creative calculation of dumping margins)?

But, it might be said, deplorable though this may be, does it really create a serious problem for the international trading system? Few anti-dumping measures are actually used, and very few countries use them. It is true that two of the major users are the United States and the European Community. Even so, in the period 1980-1986, the United States made only 195 affirmative findings (including 19 against non-market economies [NMEs]) and the EC only 213 (108 related to NMEs).[16] These numbers may sound large, but the products to which anti-dumping measures apply are very narrowly defined, and these actions touch only a tiny fraction of the trade of the United States and the Community.

The number of affirmative findings of dumping, however, is a poor measure of the importance of anti-dumping measures in blocking trade. There is a problem of inferring the effectiveness of a punishment from the frequency with which it is used. If potential offenders believe that there is a high probability that their offence will be detected, an effective punishment need not be used very much—the offence is likely to be committed less frequently.

Anti-Dumping Action and VERs

The real sting in anti-dumping action comes from its connection with voluntary export restraints. Either the authorities or domestic producers are in a position to make very credible threats to foreign producers that anti-dumping duties will be imposed upon their products unless they mend their ways and behave in a more co-operative and responsible manner—that is, accept a VER.

The Anti-Dumping Code almost invites such action. Article 7 of the Code authorizes the suspension or termination of anti-dumping proceedings:

> . . . upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question so that the authorities are satisfied that the injurious effects of the dumping is eliminated.

This provision, which does not appear in the original version of Article VI, comes very close to authorizing VERs. Whether an exporter agrees to a maximum quantity or a

minimum price makes little difference: in either case, the volume (though not necessarily the value) of his exports will be reduced.

The EC, however, has gone far beyond this in the use of anti-dumping action as a tool for obtaining VERs. There is a crucial difference between U.S. and EC procedure in this respect; the United States is quite likely to return the anti-dumping duties that have been paid—albeit after a lapse of time and, it is reported, a lengthy and time-consuming procedure. The EC, on the other hand, almost certainly will not return the anti-dumping duties that it has collected.

Article 16(1) of the Basic Regulation of the EC says that

> Where an importer can show that the duty collected exceeds the actual dumping margin . . . the excess amount shall be reimbursed. . . . All refund calculations will be made in accordance with the provisions of Articles 2 and 3 . . .

Article 2(8)(b)(ii), however, says that in calculating the export price, allowances shall include:

> Customs duties, *any anti-dumping duties* and other taxes payable in the importing country by reason of the importation or sale of the goods (emphasis added).

To see the effect of these two provisions together, consider a product on which the Commission claims to have discovered a dumping margin of 30 per cent and on which an anti-dumping duty of 20 per cent has been imposed. The importer of the product into the EC raises its price by 20 per cent. What is the dumping margin now? Well, Article 2(8)(b)(ii) says that the dumping duty must be treated as a cost; As a result of the duty, the costs of importing have risen by 20 per cent, so the dumping margin after the price increase is *still* 30 per cent.

To obtain a refund of the dumping duties charged upon his product, the importer into the EC must raise the price of the product by 50 per cent: the dumping duty *plus* the dumping margin! The EC requirements for refund of anti-dumping duties will rarely be met.

Thus, a company selling a product subject to anti-dumping duties on entry into the United States will, if its sales after the imposition of duties are at a non-dumped price, receive back the anti-dumping duties it has paid. A company that must pay anti-dumping duties on entry of its product to the EC typically will not.

A company threatened with anti-dumping action in the United States must anticipate a tiresome, expensive, and time-consuming legal process. But the actual penalty is in effect that the company must raise its prices in the U.S. market. Ultimately, therefore, it will keep for itself the higher profit per unit on those sales that it continues to make—or at least, taking account of the delay in repayment and the costs of obtaining it, a large fraction of that additional profit per unit.

In the EC, a company threatened with anti-dumping action must also anticipate a tiresome, expensive, and time-consuming legal process. But it cannot anticipate a higher profit per unit on the sales it continues to make.

Moreover, there is little scope for choice in its commercial response to the anti-dumping duty. Article 13(11) of the new EC Dumping Regulations says that "Where the exporter bears the anti-dumping duty, an additional duty may be imposed to compensate for the amount borne by the exporter." "Any party directly concerned" can initiate an investigation by presenting to the Commission evidence that the resale price to the first independent buyer has not increased by the amount of the duty. Hence, the EC competitors of an exporter who has raised his EC price by less than the full amount of an anti-dumping duty can initiate an investigation that is very likely to result in the imposition of an additional duty.

Consider an exporter selling a product in the EC at non-dumped prices. He suspects, nevertheless, that the EC is going to charge him with dumping, and he believes that if he sells at non-dumped prices, the EC will assess a dumping margin of 30 per cent. He also believes, however, that the dumping margin will fall by a percentage point for each percentage point that he raises his EC prices above the non-dumped level (so that he believes that his product will be found not to dumped if he raises his prices by 30 per cent). Under these circumstances, a sensible course of action for him is to raise his prices by something like 30 per cent. If he raises them by, say, 20 per cent, and the Commission finds a dumping margin and charges a dumping duty of 10 per cent, he must raise his prices by a further 10 per cent anyway—but the EC, not the exporter, will receive that 10 per cent on all of his remaining sales. It therefore makes sense for him to sacrifice some current sales and profits by raising his prices now in order to avoid that penalty.[17]

That will not be so if he holds the same beliefs about the U.S. market. It will make sense for him to raise his U.S. prices if by so doing he can avoid the costs of defending himself against charges of dumping (as it will in the EC). But (abstracting from the delayed payment and the administrative costs of obtaining it), he has no incentive to raise his prices to avoid the U.S. *penalty* for dumping—which, after all, is in effect that he should raise his prices.

Other things equal, the prospect of anti-dumping investigation by the EC is therefore very much more threatening than the similar prospect in the United States. The EC anti-dumping regulations are a very much more effective means of inducing exporters into VERs or some equivalent device.

To avoid EC anti-dumping duties, for example, Japanese, Korean, and other far-eastern exporters must charge in the EC prices far above the level that objective observers would regard as non-dumped (Hindley, 1988). Japanese, Korean, and other far-eastern exporters to the EC are also likely to think it close to certain that anti-dumping duties will be imposed upon their products if they do not charge these elevated prices. And if there is some doubt left in their minds, no doubt their EC competitors, perhaps on a trip to the Far East sponsored by the European Commission, will do them the service of pointing out the risks they are running—and will suggest that they restrain exports to avoid those risks.[18]

Exporters confronted with the threat of a dumping investigation, the outcome of which is not in substantial doubt and to which heavy penalties are attached, have strong incentives to offer VERs. Indeed, VERs may have become an unnecessary formality. A warning that they are suspected of dumping and subject to 'surveillance' may be sufficient to persuade them to substitute 'co-operative' for 'disruptive' behaviour without any formal VER agreement on quantity restrictions.[19]

The position thereby created in the EC is one in which EC producers are highly protected against competing imports when those imports are eligible for an application of the EC anti-dumping methodology. From their standpoint, it is as though imports face, say, a 30 per cent duty. Yet they avoid the appearance of needing protection to survive against fair competition. Either they are protected only against 'unfair' competition, or they are protected by the reactions of exporters to the mere possibility of such protection—protected, but not by any directly observable protective instrument.

For the EC as a whole, however, the cost of that protection is much higher than if tariffs were employed. If the price of imports is raised by 30 per cent as a result of a tariff imposed by the EC, the EC collects revenue from the tariff that is available for redistribution to EC residents. If an affirmative finding of dumping is followed by an anti-dumping duty, that is at least partially true for a directly affected product.[20] But the price of products not subject to anti-dumping duties will rise in reaction to the threat. If an exporter to the EC raises his price by 30 per cent to *avoid* anti-dumping action by the EC, no EC government gets any revenue from that. Buyers of the product in the EC are worse off—and will be doubly worse off when the EC producers will match the price increases forced upon exporters.

Welfare losses imposed on the EC by the EC, however, are not the centre of the issue. The threat to the world trading system is. And that threat is substantial.

What Ought to be Done?

I have argued that VERs may be less bad than some other commentators have judged. The question posed (Hindley, 1987) is whether a VER is worse or better than the GATT measure(s) legally available to the importer. Part of the answer is that if *both* exporter and importer *prefer* a VER to GATT-legal measures, adverse third-party effects from the VER, as compared with the GATT measure, are necessary for the VER to be judged worst. But such third-party effects are not evident. Hence, however undesirable in themselves, VERs may be better than GATT-sanctioned action. The important implication is that policy should focus not on an attempt to ban VERs (were that feasible), but on reform of the alternative GATT measures.

The argument applies to VERs arrived at as a result of anti-dumping investigations or threats of anti-dumping investigations based on a methodology that is seriously biased

against the exporter. If such methodology is indeed consistent with the GATT, there is a compelling case for declaring that it ought *not* to be consistent.

Reforming Article VI

Broadly speaking, there are two approaches to reform of Article VI. One is based on the perception that contemporary anti-dumping action has lost (if indeed it ever had!) any semblance of economic justification. Followers of this approach search for such justification, and use it as a foundation for reconstruction of Article VI.

This approach sounds modest and sensible (and, indeed, it *is* modest and sensible). It leads, however, to very radical conclusions. There is only one defensible economic rationale for anti-dumping action. That rationale is that dumping by foreign monopolists or oligopolists is intended to eliminate domestic competitors as a prelude to monopolistic exploitation of the market.

The circumstances surrounding most dumping cases, however, make it inconceivable that such predatory pricing is at issue. If Article VI authorized anti-dumping action only when predatory intent was conceivable, it would not authorize the great bulk of present cases. If it authorized anti-dumping action only when predatory intent, or actions consistent with such intent, could be demonstrated beyond reasonable doubt, it would not authorize most of the remainder.

From an economic standpoint, these are very desirable outcomes. But if they can be achieved at all, it is in some longer term than that defined by the end of the Uruguay Round. Within the span of the Uruguay Round, this reform of Article VI is not feasible.

The second approach is to treat reform of Article VI as an exercise in damage limitation. This is much less satisfactory than the first approach in intellectual terms. It is, though, more likely to define a reform that is politically feasible (to the extent that any reform has any chance of success in the Uruguay Round).

Supporters of the damage-limitation approach are likely to believe that the authorization of anti-dumping action contained in Article VI has a political rather than an economic justification. The authorization was (and is) necessary to diffuse protectionist opposition to the GATT, the members of which would otherwise have pilloried the Agreement as a charter for unfair trade.

That concession to political reality has potentially major economic costs. The scale of these, however, is limited by the Article VI controls on the calculation of dumping margins and on anti-dumping action. On this view, there is (and most probably always will be) tension between the protectionist potential of Article VI and the Article VI controls on that potential. The relevant issue for the Uruguay Round is whether the balance has tilted too far against the controls and, if so, how that balance can be restored.

That the balance has tilted too far in favour of protectionist abuse is beyond question. Indeed, the present situation raises the possibility that there is nothing on the other side of the 'balance'—that Article VI no longer contains any effective controls.

On the basis of the preceding analysis, two clear targets for action present themselves. Manipulation of dumping calculations provides the first. Starting from the proposition that calculations of dumping margins should show dumping only when there has in fact been dumping, the means and methods by which dumping margins are to be calculated should be laid down in much greater detail.

To achieve a state of affairs in which dumping calculations are unbiased is probably impossible—the complete range of choices that an anti-dumping authority will be called upon to make in particular cases cannot be anticipated, so that any set of rules will allow some scope for manipulation by the authority. But there is no technical reason why that field of freedom should be anything like its present size.

The second target is provided by EC practices in regard to refunds of anti-dumping duties—or, rather, the EC's effective failure to refund such duties, even when the initial cause of complaint is removed. That practice introduces a punitive element into anti-dumping action that is alien to both Article VI and the Code. Anti-dumping action should be corrective, seeking to remove the cause of injury, not punitive. Anti-dumping duties should be imposed to raise the price of a dumped product by an amount sufficient to remove injury. Duties collected should thus be refundable, with accrued interest, on demonstration that the price of the product has been raised to an appropriate extent.

This reform would reduce the threat potential of anti-dumping action. EC manipulation of anti-dumping action has succeeded in creating a situation in which the mere threat of such action is likely to produce all the trade-restrictive effects of a VER, without any of the formalities usually associated with VERs.

These reforms will not make of Article VI an ideal piece of legislation. But they will rob Article VI of much of its potential for crippling, or making irrelevant, the rest of the GATT. That, it seems to me, is currently the most important aim for reform of Article VI.

Yet are even these relatively modest reforms feasible?

With the 1988 Trade Act, the United States has just reformed and added to U.S. unfair trade legislation. It is unlikely to welcome attempts through the GATT to limit its powers.

The EC introduced new anti-dumping regulations in July 1988. Moreover, as noted in the introduction to this paper, the European Commission, in view of its difficulties in obtaining authorization for VERs, is likely to regard its anti-dumping weapon as an essential part of its trade policy armoury. It is therefore likely to resist any reform that would limit its ability to use anti-dumping action as a substitute for VERs.

This is not a propitious constellation of forces. Yet the issue is vital. The current abuses of anti-dumping action are not concealed from the view of the contracting parties. If these evident instances of protectionist creativity go uncurbed, there will be more such

creativity, and more copying by other national bureaucracies of the innovations that others have already made.

The concession to political reality embodied in Article VI was not intended to allow governments to manage trade in the way they and their import-competing producers think best. But that is the result it will have if protectionist use of anti-dumping and other 'unfair trade' measures go unchecked in the Uruguay Round.

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1. For an account of the politics and the economics of the first of the few Community VERs, see Hindley (1986).

2. Definitive determination, reported in the *Official Journal of the European Communities*, Brussels (hereafter cited as the *Official Journal*), L193/1, 21 July 1984.

3. Definitive determination, *Official Journal*, L167/3, 25 April 1985.

4. Definitive determination, *Official Journal*, L163/1, 22 June 1985.

5. Definitive determination, *Official Journal*, L176/1, 6 July 1985.

6. Definitive determination, *Official Journal*, L97/1, 12 April 1986.

7. Definitive determination, *Official Journal*, L54/12, 24 February 1987.

8. Definitive determination, *Official Journal*, L124/1, 13 May 1987.

9. Definitive determination, *Official Journal*, L317/33, 24 November 1988.

10. Definitive determination, *Official Journal*, L5/23, 7 January 1989.

11. Definitive determination, *Official Journal*, L57/55, 22 February 1989.

12. Provisional determination, *Official Journal*, L356/47, 24 December 1988.

13. GATT, *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade* (Geneva, 1979).

14. Council Regulation No. 2176/84.

15. Council Regulation No. 2423/88 (*Official Journal*, L209, 2 August 1988).

16. The other major users were Canada (140 affirmative findings in 1980-86) and Australia (219). It should be noted that this list does not necessarily give an accurate impression of the relative importance of anti-dumping action, and certainly not of unfair trade actions in general. For instance, the EC uses its anti-dumping powers to deal with cases that in the United States might be treated as subsidy. In 1980-86, there were 181 affirmative findings in subsidy actions in the United States; 6 in the EC; 8 in Canada; and 13 in Australia. See Finger and Olechowski (1987), Appendix 8.

17. The position is a little more complicated than this. The Commission will assess the dumping duty at whichever is least—the dumping margin or the injury margin. If calculations of dumping margins were unbiased, an exporter might in principle be able to estimate with reasonable accuracy the dumping margin that the Commission will discover—and insofar as he understands the biases, he will be able to do so even when the calculations are biased. But he cannot even in principle assess the margin of damage.

    A second complication is the so-called 'screwdriver-plant regulation'—Article 13(10). This permits the Commission to extend an anti-dumping duty imposed on a final product to components of the product shipped to the EC for assembly *without separate investigation of the conditions of sale of the components*. The duty on components can be avoided, however, if at least 40 per cent of the content of the product assembled in the EC is not from the dumper's home country. The effect of this regulation is in particular cases to give a major incentive for the assembly of goods in the EC. This EC provision is the subject of a GATT complaint by Japan.

18. An interesting example is reported in *The Financial Times* of 19 May 1989. The report concerns the efforts of Mr. Martin Bangemann, the Commissioner for the Internal Market, to liberalize the EC car market, which at the moment is fragmented by VERs negotiated with Japan by the governments of some member states (notably, the UK, France, Italy, Spain and Portugal) and is therefore creating

major problems for the Commission's 1992 program. The newspaper account is headed "Opening the gates of Europe's car market", and it reports efforts of Mr. Bangemann to do away with the VERs of the member states without replacing them with a Community VER (for which it would be difficult to obtain support from the northern member states). However, the account quotes a paper circulated by Mr. Bangemann as saying that:

> While this clearly shows Europe's will to be a partner rather than a fortress, it should be emphasized that the Community's willingness to be open must be clearly reciprocated by the conduct of international trade in fair conditions, as controlled by anti-dumping regulations.

It seems, therefore, that Mr. Bangemann is proposing an open European Community car market on condition that the Japanese raise their EC prices by the amount necessary to avoid EC anti-dumping duties—20 per cent, 30 per cent, or 40 per cent?

19. Under the headline "South Korea seeks to curb exports to EC", *The Financial Times* (6 October 1988) reported that

> The South Korean government is seeking to restrain its exports to the European Community through a new series of voluntary understandings with Korean industrial federations, according to its ambassador to the EC.
>
> Mr. Chong Ha Yoo, the South Korean envoy, said that his country 'had got the message' about its sharp 1986-88 increase in exports to the EC.
>
> The increase has lead the European Commission to initiate several dumping investigations . . .
>
> Both Seoul and Brussels officials stress the unilateral and voluntary nature of the restraint.

20. But only partially true. If an investigation can find dumping margins of 30 per cent when there is no dumping, it will find a dumping margin of only 10 per cent when an over-optimistic exporter has raised his price by only 20 per cent above the non-dumping level. Hence, the Commission will be able to levy a duty only on the 10 per cent 'dumping margin' that it has 'discovered'.

Negotiating Import-Relief Laws: The Uruguay Round and Beyond

Murray G. Smith
Institute for Research on Public Policy

Introduction

Over the last two decades, there has been a marked shift in the character of trade barriers in, and trade disputes among, the major industrial countries, which have also influenced trade relations between the developing and industrial economies. As tariffs have been reduced among members of the General Agreement on Tariffs and Trade (GATT), industries have sought relief from import competition through application of anti-dumping and countervailing duties or escape clause measures as permitted under GATT rules and also through negotiation of voluntary restraint arrangements which are outside the GATT framework. In addition, voluntary export restraints are permitted under the Multifibre Arrangement (MFA) for trade in textiles and apparel.

The proliferation of voluntary export restraint and managed trade arrangements stems in part from some ambiguity about their legal status under GATT rules. Yet many voluntary export restraint arrangements are violations of GATT Article XI. For example, there was a GATT complaint on the U.S.-Japan semi-conductor arrangement. The problem is not simply a loophole in the GATT rules regarding export restraints but a more fundamental problem in the trading system. The Leutwiler Report decried the erosion of the trading rules, observing:

> Today, more and more countries are increasingly ignoring the trading rules, and concluding bilateral, discriminatory and restrictive agreements outside the GATT rules. The United States and the European Community maintain restraint programmes, for example, with virtually all their steel suppliers, principally through restrictions on export trade imposed after bilateral negotiations. . . . All these . . . attempts to regulate exports or imports have accelerated the trend toward protectionism. Within each country, the force of

> example prompts constant demands for discriminatory intervention from almost every industry. Internationally the force of precedent allows national industries to justify their demands by pointing to the protection granted to their competitors abroad. In both cases, managers and workers ask why they should abide by the rules if no one else does. At present the GATT system is not adequately discharging one of its ultimate functions: to provide help to governments in withstanding such pressures from special interests. In such a disorderly world, each trade dispute has a self-fulfilling effect and undermines confidence in the basic rules of the trading system.[1]

These domestic interest group pressures were evident in the softwood lumber dispute between Canada and the United States. Although various congressional bills directed against softwood lumber imports did not become law, a change in the interpretation of U.S. countervailing duty law by the U.S. Commerce Department in the preliminary determination in the 1986 *Softwood Lumber* case resulted in a negotiated settlement where Canada imposed a 15 per cent export tax on lumber shipped to the United States.[2] The bitter conflict over softwood lumber shaped official attitudes on both sides during the Free Trade Negotiations and influenced the Agreement which emerged.

Although the softwood lumber case stands out in Canada-U.S. economic relations, the example is indicative of a general phenomenon. For example, a significant proportion of Japanese and Korean exports are subject to voluntary export restraints. Apart from the "voluntary" export restraints negotiated under the Multifibre Arrangement, most voluntary export restraint arrangements are imposed either as settlement arrangements for anti-dumping and countervailing duty and safeguards actions or as a result of threats of such actions.

The Canada-U.S. Free Trade Agreement (FTA) deals with these domestic pressures on bilateral trade in a variety of ways and with varying degrees of effectiveness. The Agreement creates new dispute settlement mechanisms and elaborates the GATT trade rules in areas such as safeguards actions to restrain imports or exports on an "emergency basis". Although it was not possible to negotiate new rules governing the use of countervailing and anti-dumping duties, a new binational appeal mechanism was created which replaces judicial review of administrative decisions and which includes a review of changes in legislation.

The Canada-U.S. Free Trade Agreement provides for future negotiations of the rules regarding subsidies and the anti-dumping and countervailing duty laws over a five to seven year time frame, but in the near future the two countries are likely to focus on the multilateral negotiations during the Uruguay Round. Any changes in the multilateral rules regarding the application of national trade laws will influence the subsequent bilateral negotiations.

This paper reviews various rationales for national import-relief laws, examines some of the conflicts in the international policy climate, focuses on issues involved in negotiating subsidies and countervailing duties, and probes the linkage between national import-relief laws—anti-dumping and countervailing duty laws under Article VI of the GATT and safeguard measures under Article XIX—and the proliferation of voluntary export restraint measures. The paper concludes with suggestions for strengthening the

multilateral trade rules in the Uruguay Round, but observes that these issues are likely to remain on the international negotiating agenda beyond the Uruguay Round.

Factors Influencing the Evolution of Trade Laws

This section outlines some of the economic, political, international, and historical factors that have interacted to create the extraordinarily complex systems of import-relief laws in modern industrial economies.

Economic Rationales

Economic rationales may not be the dominant factors influencing the design of import-relief laws, but proponents of such laws frequently cite them in support of their position. Because of these economic arguments, policy makers are persuaded to regard as invalid the normal presumption that international trade benefits both exporting and importing countries. Let us examine these arguments.

Dumped or subsidized goods can have predatory effects. This rationale has a long history, having been cited when Canada introduced anti-dumping legislation in 1904. At that time, the Canadian Minister of Finance stated that:

> the trust or combine, having obtained command and control of its own market and finding that it will have a surplus of goods, sets out to obtain command of a neighbouring market, and for the purpose of obtaining control . . . will put aside all reasonable considerations with regard to the cost or fair price of the goods. . . . If these trusts and combines in the high tariff countries would come under obligations...to supply us with these goods at the lowest prices for the next fifty years, it would probably be the part of wisdom for us to close up some of our industries and turn the energies of our people to other branches. But surely none of us imagine that when their high tariff trusts and combines send goods into Canada at sacrifice prices they do it for any benevolent purpose. They are not worrying about the good of the people of Canada. They send the goods here with the hope and the expectation that they will crush out the native Canadian industries.[3]

The introduction of anti-dumping legislation in the United States also was based on the rationale of predatory effects. Indeed, the *Anti-dumping Act of 1916* provided that dumping was unlawful if "done with the intent" of destroying U.S. industries or monopolizing U.S. trade.[4] Although the 1916 act still applies, it has been superseded by the *Anti-dumping Act of 1921* and the *Trade Agreements Act of 1979*, which require a less stringent "injury" test before anti-dumping duties are levied.

While anti-dumping duties have been used to prevent predation by private firms, the use of countervailing duties has been justified on the grounds that foreign subsidies

can damage domestic industries and create a potential monopoly for foreign suppliers of particular products.[5] This argument has particular relevance to targeted subsidies intended to aid the development of new technologies and products.

Subsidies distort international trade and reduce world economic welfare. The argument behind this rationale for import-relief laws is that even if the imposition of countervailing duties is contrary to the economic interests of the importing country, the existence of procedures to investigate foreign subsidies and to impose countervailing duties when necessary contributes to better functioning of the world economy.[6]

Although it is widely accepted in the international community that subsidies distort trade, there has been considerable disagreement about the extent to which different types of subsidies actually have this effect. For much of the postwar period, efforts of countries within the GATT and the Organization for Economic Cooperation and Development (OECD) to limit the use of subsidies as well as actions under national countervailing duty laws were directed against export subsidies—subsidies explicitly linked to increased export sales. It was not possible, however, to extend the GATT prohibition on export subsidies to primary agricultural products and special rules were incorporated into Article XVI:

> . . . contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants . . . any . . . subsidy which operates to increase the export of any primary product . . . such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product.[7]

Needless to say, this ambiguous rule has been a source of many difficulties. By the early 1970s, however, concerns were raised about domestic subsidies that may indirectly influence export performance to varying degrees. It has been even more difficult to reach an international consensus on these latter issues.

Injurious imports impose adjustment costs on firms and workers. Another economic rationale for import-relief measures is that sudden surges in imports result in unemployment and in under-utilization of plant and equipment, and that these effects would be reduced significantly if more orderly shifts in trade occurred. Indeed, some argue that adjustment costs should be the sole concern of trade policy. As Richard Cooper states:

> Perhaps we should not worry so much about government subsidies to economic activity—or rather government intervention of all types—as far as their effects on foreign trade are concerned, provided the interventions are introduced sufficiently gradually so that they do not impose acute adjustment costs on economic activities outside the country in question.[8]

Economic Critiques

As the quote from Cooper suggests, there are economic critiques of, as well as economic rationales for, import-relief laws. These critiques can be summarized briefly.

Import-relief laws can inhibit adjustment by domestic industries to international competition. Temporary protection may be warranted to reduce adjustment costs borne by workers and firms, but if the measures are badly timed, the effect may be to increase adjustment costs. Also, firms may not restructure production and upgrade product lines when import-relief is granted. In particular if firms believe that so-called "temporary" protection is a signal that protection will be granted in the future, then incentives for adjustment are reduced greatly.

Countervailing and anti-dumping duties can prevent trade that is of benefit to the importing country. Consumer benefits and efficiency gains from trade that accrue to the economy are not taken into account when countervailing and anti-dumping duties are imposed.[9] Taken to extremes, imposing duties on all trade regarded as "unfair" harkens back to the doctrine of the scientific tariff, which would prevent any of the gains from trade among countries being realized. Indeed, economists have argued that subsidies are less distorting than the equivalent tariffs and also are subject to fiscal restraints.[10]

Political Pressures

In addition to economic arguments for and against import-relief laws, domestic political pressures also play an important role in shaping the import-relief systems of the major industrial countries.

Maintaining a political coalition to support open markets requires taking action against unfair competition. In the United States, with its more open lobbying process, it is evident that the efforts of successive administrations to obtain congressional authorization to negotiate tariff reductions have been aided by legislative actions and administrative changes that have broadened the application of U.S. import-relief measures.[11] In Canada, a similar process seems to operate, because Canada also has broadened the application of its import-relief laws along lines that parallel closely U.S. procedures and practice. During the 1980s, the European Community appears to have evolved toward a position favouring "free but fair" trade analogous to the U.S. position and anti-dumping law is the preferred European instrument. European Community anti-dumping laws are less transparent and at least as protectionist as Canadian and U.S. anti-dumping laws.

Displaced workers and firms with declining sales resist import competition. Imports can play a highly visible role in reducing domestic firms' sales, resulting in under-utilization of plant capacity and dislocation of workers. It is not surprising,

therefore, that import-competing interests seek the imposition of trade barriers under any mechanisms available to them.

Permitting "due process" for domestic interests deflects domestic and international pressures on policy makers. Legislators often find that the existence of a mandatory import-relief system can help deflect pressures from their constituents for overt protectionist measures that restrict imports.[12] At the same time, nondiscretionary import-relief laws help deflect pressures from foreign governments when such measures are imposed.

International and Historical Factors

A number of international and historical factors have shaped import-relief systems. International arrangements act to constrain and shape domestic pressures for import-relief measures. At the same time, national governments negotiate international agreements in response to domestic lobbying pressures.

The GATT has sanctioned remedies against unfair trade and import disruption. Since the GATT has permitted countries to impose import duties on dumped or subsidized goods (Article VI) and temporary import restraints protecting industries experiencing disruptive surges in imports (under Article XIX), these measures have become the focus of efforts to limit import competition.

Subsidies can be used to offset negotiated reductions in trade barriers; thus, actions against unfair trade preserve the integrity of trade agreements. According to this argument, trade agreements such as the GATT or an FTA are international contracts consisting of negotiated reductions in tariff and non-tariff barriers to trade. Since subsidies can be used to counteract improvements in market access that foreign producers obtain as a result of trade negotiations, disciplines on subsidies or the threat of counter measures can help to preserve the integrity of the contract.

International codification of import procedures and remedies has encouraged industrial countries to adopt similar import regimes. Rodney Grey has argued eloquently that the process of negotiating international agreements on import-relief laws can lead to the proliferation of protective mechanisms that are contrary to the stated objective of liberalizing trade.[13] This proliferation occurs because each country seeks to ensure that its domestic import regulatory procedures are codified in international agreements. Subsequently, import-competing interests in each country lobby their domestic authorities to incorporate the import-relief laws and procedures of other countries, which the international agreements permit. For example, Canada's Special Import Measures Act, passed in 1984, embodies features of U.S. and European Community import-relief laws as well as procedures permitted by Tokyo Round codes that were previously unavailable to domestic firms seeking relief from import competition.

International negotiations involve compromises between different perspectives on particular issues. Subsidies and countervailing duties were a key issue in the Tokyo Round, yet the gap between the negotiating positions of the United States and the EC impeded the development of an effective Subsidies Code. The United States sought to discipline other countries' subsidies, while other countries sought to limit the application of U.S. countervailing duties through the introduction of an injury test into U.S. countervailing duty procedures. A compromise was achieved whereby the United States introduced the injury test for countries signing the Subsidies Code and broadened the definition of countervailable subsidies. But countervailing duties are imposed only on imports entering a country's domestic market; they are not effective remedies against foreign subsidies that displace exports. Although the Subsidies Code attempted to deal with this issue, it has proven ineffective, as has been demonstrated through the escalation of the global rivalry in export subsidies for agricultural products in the 1980s.

The Policy Climate

The various factors discussed above are sources of conflicting pressures on national trade laws and the international trading system. Conflict is evident also in the influence of recent economic developments on the policy climate for international negotiations on the application of Articles VI and XIX.

The large and sustained movements in real exchange rates that have been associated with the fiscal and monetary policies pursued by the major industrial countries and that have resulted in large global trade imbalances in the 1980s are having an enduring impact on the domestic climate for international trade policy. Although some of the most protectionist proposals for amendment of the U.S. trade laws were deleted from the Omnibus Trade and Competitiveness Act of 1988 in the final stages of Congressional consideration, the Gephart amendment lives on in modified form in the Super 301.

Certainly, the persistent U.S. trade deficit has affected not only the attitudes of key constituencies and influenced the Omnibus Trade and Competitiveness Act of 1988, it has also influenced the broader political processes shaping the conduct of U.S. trade policy, including the relationships between Congress and the Administration. For example, the U.S. steel industry is in much better competitive shape now than it was in the early 1980s, but the steel industry seems less than enthusiastic about abandoning its support system in the form of the U.S. steel program of voluntary export restraints and the industry is well organized to present its case.

This phenomenon is not confined to the United States. Canada often applies anti-dumping and countervailing duties to exports from developing and state-trading economies. The European Community has frequently commenced anti-dumping proceedings against exports from East Asian economies which has often resulted in voluntary export restraint arrangements. Indeed, one can infer from Hindley's paper in this volume that EC anti-dumping laws may be viewed as a convenient analgesic which

will help ease any political pain in the transition to a fully unified internal market scheduled for completion by 1992.

Import-sensitive constituencies will resist forcefully any efforts to limit the resort to import-relief under the anti-dumping and countervailing duty and escape clause laws, which they recognize as the source of the threats that enforce the "voluntary" export restraint arrangements. Reflecting these kinds of domestic constituency pressures, some of the official proposals for negotiation of anti-dumping laws in the Uruguay Round are based on an enforcement mentality which seeks to limit recidivist dumping and circumvention. This enforcement mentality seeks to impugn price competition as criminal behaviour.

Neither the United States nor the European Community seem inclined to negotiate tighter limits on the use of their anti-dumping and countervailing laws during the Uruguay Round. Yet several longer term factors might make it possible to negotiate significant curtailment of the anti-dumping and countervailing duty laws.

The escalation of the subsidy wars in agricultural trade in the mid-1980s prompted the leaders of the industrial countries to make repeated pledges to curtail agricultural subsidies and trade barriers. On the face of it the agricultural negotiations in the Uruguay Round seek not only to remove the special exemptions for agriculture in the GATT, but to go further in making commitments about domestic subsidy policies than has proved possible in past negotiations in the industrial sector where subsidies are much less pervasive than in agriculture. Although not much attention has been focused on the possible interaction of the negotiations on agriculture with the negotiations on subsidies and countervailing duties, it seems evident that there are important linkages. If a significant arrangement on agricultural trade barriers and subsidies can be negotiated, then that may make it easier to negotiate subsidies and countervailing duties.

Pressures to amend the trade laws to make it easier to obtain import-relief are coming from new high-technology industries as well as from declining industries and agriculture. The U.S.-Japan semi-conductor trade restraint arrangement is an example of the kinds of tensions that can result in relatively new industries. In industries such as telecommunications, concerns about subsidies and dumping are often linked to other issues such as procurement preferences, regulatory barriers to competition, and intellectual property issues.

Although current legislation and administrative practice in the trade regulatory regimes of the United States, the European Community and Canada may have drifted a long way from their ostensible justifications, it must be noted that the elimination of trade barriers alters significantly the rationale for some existing import-relief laws. Although there may be immediate domestic pressures to broaden the application of these laws as tariffs are reduced, the removal of tariffs and other non-tariff barriers to trade—such as government procurement preferences—reduces greatly the scope for predatory activity. Firms that operate in cartelized and protected home markets are better able to sustain competitive practices that are damaging to foreign rivals. Open borders,

however, limit the ability of firms to engage in such predatory strategies and also can constrain subsidy policies. As Banks and Tumlir observe:

> Analysis of the impediments to adjustment and growth reveals the key role of border protection. Without protection against imports, neither cartels (in product and labour markets) nor subsidies would pose such a problem. (If steel could be imported into the European Community without quantitative limitations, subsidy needs would soon exceed the capacity of national budgets.[14]

Furthermore, with open borders, competitive conditions in particular industries become more closely aligned, reducing the potential for import disruption from international trade.

If the undercutting of the stated rationales for import-relief laws does not seem very compelling as a basis for negotiating limitations on their application, it must be noted that the globalization of trade and investment makes these laws increasingly obsolete. For example, a Japanese corporation which could have been subject to an anti-dumping action launched by a U.S. competitor three or four years ago, might now be launching an anti-dumping action in the United States against products manufactured in Singapore or Thailand by its U.S. rival. In industries with global sourcing of parts and components, it becomes more and more difficult to determine what is the "domestic" industry that is being injured by the "foreign" competition.

Negotiating Subsidies and Countervailing Duties in The Uruguay Round

The text of the report of the Trade Negotiating Committee for the Uruguay Round which was considered by Ministers in Montreal in December 1988 and adopted at the April 1989 meeting in Geneva commits the negotiations "to negotiating disciplines on subsidies and countervailing duties". This was the task that was attempted during the Tokyo Round and the task has not been made easier by the impact on the attitudes shaping U.S. trade policy of the sustained large U.S. trade deficits. (The Canadian proposal for negotiating subsidies and countervailing duties is reproduced in Annex 1.)

One approach to negotiation of subsidies would be to clarify the classification of subsidies according to their trade impacts into categories of permitted subsidies, subsidies actionable under the countervailing duty laws, and prohibited subsidies. The U.S. negotiators during the Tokyo Round sought agreement on a red list of prohibited subsidies. Such prohibited subsidies would be subject to disciplines in the form of either countervailing duties without an injury test, action under multilateral dispute settlement mechanisms, or unilateral retaliation under Section 301 type procedures. It is likely to be difficult to reach agreement on prohibited subsidies except for explicit export subsidies. In considering proposals for classification of subsidies, it is worth noting that the same issues are being discussed in the agricultural negotiations under the label of decoupling. In either the case of agriculture, or the more general case, classification of subsidies could be useful, but is likely to make only modest differences in the application

of national countervailing duty laws. One very useful reform, however, would be to give an international mechanism the ability to determine which particular types of subsidies are subject to countervailing duty actions before a case can be initiated.

Notwithstanding the eloquent commitments of the G-7 summit leaders and the OECD Ministers with respect to liberalizing agricultural trade, a prohibition on export subsidies for primary agricultural products is likely to be particularly controversial. Export subsidies are an element of the Common Agricultural Policy and the European Community has long resisted any constraints on the use of export subsidies.

Disciplines on the use of export subsidies in primary products are likely to be negotiable only if there is considerable clarification of the issue of input subsidies and drawback. For example, any alleged subsidy on an input is not a subsidy to the downstream industry if there are no quantitative controls or duties imposed upon the export of the input product. Similarly, processing industries purchasing inputs above the world price level should be permitted a drawback in the amount of the import duty.

Apart from the issue of export subsidies on agricultural products, the negotiations on domestic agricultural subsidies could have important implications for the negotiations on subsidies and countervailing duties. Regardless of whether the European aggregate approach to the Aggregate Measure of Support (AMS) or the U.S./Cairns type of approach stressing detailed policy commitments is adopted, the resulting commitments on domestic support policies will be more analogous to an IMF adjustment plan than to GATT obligations. Questions would remain about the nature of the dispute settlement mechanisms that would apply to these policy undertakings as differences in interpretation inevitably will arise as exchange rates and commodity prices fluctuate and as domestic agricultural policies are adjusted. Even if it is possible to develop a multilateral surveillance mechanism to monitor AMS commitments, the issue of enforcement will remain. If, however, a prohibition on export subsidies and a regime of tariffication of all border measures were adopted, then the burden upon the subsidy undertakings and related surveillance and dispute settlement processes would be alleviated. Nonetheless, countervailing duty laws are viewed as a means of enforcement of subsidy rules and commitments.

Countervailing duties are a blunt instrument. On the one hand countervailing duties are not a very effective deterrent to subsidies intended to stimulate new investment. For example, a subsidy in the amount of 20 per cent of capital costs for a moderately capital intensive industry could easily translate into a subsidy of about 1-2 per cent per unit of sales over the life of the plant. A possible countervailing duty in the amount of 1-2 per cent may not inhibit governments from offering, and firms accepting, such investment subsidies. Furthermore, countervailing duties do not provide any effective discipline upon subsidies which displace exports in third country markets or lead to import substitution in the home market; issues which are particularly serious in the case of agricultural trade.

Some years ago, Richard Lipsey and I advanced the idea of a net subsidy in the sense of the differential between the domestic and foreign subsidy in the context of our proposal to launch the Free Trade negotiations with the United States.[15] The logic of this proposal

is self-evident. If countervailing duties are intended to offset economic distortions, then the duty should be limited to the amount of the competitive distortion. Indeed, the idea is even consistent with the insidious notion of the level playing field.

The net or differential subsidy approach could liberalize trade in two ways. First, and perhaps most important, in most instances the calculation of the subsidy differential would lead to a lower margin of duty. The lower margin of duty, if one is imposed, combined with the potential disclosure of home-country subsidies, will reduce the incentives for petitioners to bring countervailing duty petitions. Second, if the determination of injury causation is clearly linked to the magnitude of the subsidy differential instead of being based more loosely on the volume of subsidized imports, then the probability that injury will be found is reduced.

There are two objections that might be made to this net subsidy approach. First, the net subsidy approach will not deter, and may actually stimulate, bidding wars to attract new investment or to subsidize domestic farmers at equivalent levels. Second, there is little incentive for countries that are heavy users of countervailing duty procedures to move to a net subsidy concept since at present countervailing duties are applied on the basis of the foreign subsidy, not the subsidy differential. Whether one is seeking to deter foreign subsidies or to protect domestic industry, it is convenient to ignore domestic subsidies when calculating countervailing duties.

Both these objections could be countered by applying the net subsidy concept if countries remain in compliance with their multilateral subsidy undertakings. This would be a logical extension of rules on export credits in the Tokyo Round subsidies code. If countries remain in compliance with the OECD guidelines then export credits are not considered export subsidies. In the industrial sector, subsidy commitments might take the form of undertakings about the maximum share of capital costs comprised of government assistance of all kinds. In practice this would amount to a variation on current *de minimis* rules, although there may be some scope for variation among sectors in the thresholds.[16]

The net subsidy approach in conjunction with subsidy undertakings could be much more significant in its implications for agriculture, since I am inclined to believe that some less than fully decoupled agricultural subsidies will remain in place for at least a few years after the Ministerial meeting slated for Brussels at the end of the Uruguay Round. Such a net subsidy approach would prevent the application of countervailing duties to commodities where support levels were comparable, yet it would provide a powerful incentive for countries to remain in compliance with their multilateral (or plurilateral) subsidy undertakings and thus would impose some discipline upon import substitution as well as impacts on third markets.

Import-Relief Laws and Managed Trade

This paper offers some observations and suggestions about how to resolve some of the contentious issues in negotiations over subsidies and over countervailing duties, but the overall theme is that strengthening of the trading rules requires progress on several issues during the Uruguay Round. The negotiation of anti-dumping and countervailing duty laws are clearly interrelated and if the application of these laws could be curtailed, this would serve to reduce the scope for managed trade regimes involving voluntary export restraint arrangements.

The proliferation of voluntary export restraints is often linked to the failure to negotiate a safeguards code during the Tokyo Round. Some have proposed that new procedures permitting selective safeguards would impose some multilateral disciplines upon arrangements which are currently outside the GATT system. The risk, however, is that permitting selective safeguards could make them more legitimate and the result could be a proliferation of MFA-type of managed trade regimes, which were authorized within the multilateral system.

If the objective is to prevent existing extra-GATT arrangements such as steel restraints from evolving into a permanent MFA-type arrangement, then a priority for revising safeguard rules is to increase pressure upon countries from renewing temporary trade restraints. Beyond notification obligations and increased multilateral surveillance of such grey-area measures, the obligations on exporting countries under Article XI could be clarified in order that third countries may become more inclined to invoke the GATT dispute settlement procedure.

Globalization of production has two consequences for the negotiation of international trade rules regarding import-relief laws. First, growing globalization means that changing and clarifying international rules regarding the definition of like product, the standing of petitioners, rules of origin, and injury criteria in order to make it more difficult for domestic interests to obtain import-relief under the trade laws may have the cumulative effect of significantly reducing the probability that such actions will be filed and that they will be successful. Such incremental reform will reduce the credibility of these actions as threats to exporters and reduce the pressure for exporters to enter into voluntary export restraints. If the obligations under Article XI on exporting countries, which circumscribe the use of export restrictions, were strengthened that would also increase the incentives for exporting countries to avoid the use of voluntary export restraints. Such incremental reforms could do more to liberalize trade, than might be anticipated at first glance.

Second, and perhaps more important, globalization of production is changing the political economy of trade policy in the major industrial countries. As specialization proceeds and individual plants become more dependent on imported inputs and on export markets, then firms and possibly unions will recognize that the uncertainties created by import-relief laws have real economic costs while the benefits of resorting to those laws will decline.

Since such changes in perspective operate with considerable lags, it may be difficult to achieve substantial reform of the anti-dumping and countervailing duty laws in the *time frame of the Uruguay Round. Not only will attitudes need to change substantially* and rapidly, but what is required would be a significant restructuring of the Subsidies and Anti-dumping Codes, which would link significant liberalization of the import-relief laws to commitments on market access including non-tariff barriers such as procurement preferences. Ironically, the problems in agricultural trade are sufficiently acute that such a plurilateral arrangement encompassing a broad range of issues is conceivable and perhaps even possible for agricultural trade.

Conclusion

If the Uruguay Round is to meet the challenges put forward by the Leutwiler Report of reversing the erosion of the rules of the trading system and providing "help to governments in withstanding . . . pressures from special interests", then some difficult issues will need to be addressed. This paper suggests a three-pronged strategy to strengthening trade rules. First, make it more difficult for domestic interests to obtain relief under the anti-dumping and countervailing duty laws. Second, increase pressure on countries to inhibit renewal of ad hoc trade restraints. Third, clarify the obligations of exporting countries which will encourage them to avoid export restraint arrangements.

The more comprehensive the overall package that is negotiated in the Uruguay Round, the more likely that it will be possible to negotiate stronger trade rules which will curtail the proliferation of managed trade regimes. For example, it might be possible to negotiate the net or differential subsidy approach in the agricultural sector in conjunction with multilateral undertakings with respect to negotiating domestic agricultural subsidies. More generally, progress on negotiating elimination of procurement preferences, rules for trade in services, intellectual property rules, and tariff reductions, as well as achieving fuller participation of higher income developing countries in the obligations of the GATT system could facilitate negotiations on import-relief laws. Strengthening of the trade rules is essential to restoring the credibility of the GATT system and the Uruguay Round could, and should, make an important contribution in this regard. But I conclude that the issues involved in negotiating import-relief laws are going to remain on the multilateral and plurilateral agenda beyond the Uruguay Round. However, the outcome of the Uruguay Round negotiations on import-relief laws and across the whole negotiating agenda, will shape the subsequent international agenda.

Notes

1. F. Leutwiler *et al. Trade Policies for a Better Future: Proposals for Action* (Geneva: GATT Secretariat, 1985), pp. 19-21.

2. Michael Percy and Christian Yoder, *The Softwood Lumber Dispute and Canada-U.S. Trade in Natural Resources*, (Halifax: Institute for Research on Public Policy, 1987).

3. The 1904 Budget Speech of the Canadian Minister of Finance, W.S. Fielding, cited in R. de C. Grey, "Trade Policy and the System of Contingency Protection in the Perspective of Competition Policy" (Paper prepared for the Department of External Affairs, released under the Freedom of Information Act, Ottawa, May 1986), pp. 11-12.

4. Ibid., p. 12.

5. G.C. Hufbauer and J.S. Erb, *Subsidies in International Trade* (Washington, D.C.: Institute for International Economics, 1984), p. 21; and Jackson, "Achieving a Balance," International Business Lawyer (April 1986), p. 125.

6. Ibid.

7. Article XVI (3) of the *General Agreement on Tariffs and Trade*, (Geneva: GATT Secretariat, July 1986), pp. 26-27.

8. R.N. Cooper, "U.S. Policies and Practices on Subsidies in International Trade", in Steven J. Warnecke, ed., *International Trade and Industrial Policies* (New York: Holmes & Meier, 1978), p. 120.

9. See K. Stegemann, "Anti-dumping Policy and the Consumer", *Journal of World Trade Law* 19 (1985), pp. 466-484.

10. W.M. Corden, *Trade Policy and Economic Welfare* (Oxford: Oxford University Press, 1974).

11. See I.M. Destler, *Making Foreign Economic Policy* (Washington, D.C.: Brookings Institution, 1980), pp. 129-167 and I.M Destler, *American Trade Politics: System Under Stress*, (Washington, D.C.: Institute for International Economics, 1986).

12. Ibid.

13. See Rodney de C. Grey, "A Note on U.S. Trade Practices" in *Trade Policy in 1980s* (ed.) William Cline, (Washington, D.C.: Institute for International Economics, 1983), p. 248.

14. G. Banks and J. Tumlir, "The Political Problem of Adjustment", *The World Economy* 9 (1986), p. 149.

15. Richard G. Lipsey and Murray G. Smith, *Taking the Initiative: Canada's Trade Options in a Turbulent World*, (Toronto: C.D. Howe Institute, 1985).

16. The contrast in the magnitude of industrial and agricultural subsidies in Canada and the United States is documented in Jean-Francois Bence and Murray G. Smith, "Subsidies and the Trade Laws: The Canada-U.S. Dimension" in *International Economic Issues*, (April-May 1989), (Halifax: Institute for Research on Public Policy).

Comments on Negotiating Trade Laws

Michael Finger

We all seem to agree that the subsidies-countervail and anti-dumping situations are not particularly attractive. What then can we do to make things better? Brian Hindley has made several suggestions. One is that we add to GATT an explicit statement that anti-dumping, in principle, is remedial and not punitive. He also suggests that more detail be added to GATT's definitions of dumping and injury, that GATT provide a fast-track procedure to check that national enforcement mechanisms are in fact following this new and more elaborate GATT. Murray Smith endorsed these proposals and provided several of his own: the net subsidy concept to limit countervailing duties; the red light, yellow light concept to regulate subsidies; and the aggregate measure of support concept to help with the administration of anti-subsidy policy.

Suppose you took your copy of the GATT and wrote these suggestions between the lines. What changes would this make in national policies? Even if the GATT were duly amended to add these changes to the law of the GATT, national policies would not change. They would not change because the GATT is not self-executing law. Anti-dumping and countervailing duty standards are enforced in domestic law, as they are specified in domestic law.

The anti-dumping and countervailing duty parts of the GATT have a difficult task—the *letter* of the GATT allows a contracting party to take anti-dumping and countervailing actions, but its *intent* is to limit parties' doing so. The intent of GATT Article VI is to impose an obligation on contracting parties, not to express a right to take anti-dumping and countervailing actions. But the equivalent of Article VI in national law, where it has the enforcement authority of national administration behind it, is a law that is often described as 'trade remedy's law'. A trade remedy specifies the circumstance under which

a domestic interest has a *right* to relief from import competition. Thus, where anti-dumping and countervailing duty standards have legal effect (national law), these standards are not *limits* on the imposition of import restrictions. They are the *mechanisms* for providing restrictions. Brian Hindley's examples show how completely these instruments have been *captured* by the interests that they are (from the GATT conception) supposed to regulate. The situation is worse than Dr. Hindley took the time to explain. Within the conception of the law, the economic nonsense he documented is not arbitrary or capricious action, it is reasoned action with solid legal theory behind it.

I will take up just one example of how anti-dumping actions, within their own legal context, are reasonable. Suppose I pulled a gun out of my pocket, then shot and killed one of the four persons at this table; but I did not shoot or even threaten the other three. The law would still punish me for a crime—my not shooting three persons does not make me less guilty for shooting the one. Likewise, if an anti-dumping investigation turns up five observations on export price, four above and one below the average home market price, the investigation will conclude that the exporter did dump.

Economic theory tends to consider central tendencies, and economists instinctively use measures of central tendency. But legal theories are often about specific instances, and within their own conception of things, the unfair trade laws are quite reasonable. That the home market price is, *on average*, above the export price is not better a defence against dumping than is the contention that the killer is, on average, a good citizen a defence against punishment for murder.

The suggestions made by Murray Smith and Brian Hindley—would they help? To answer, let me begin with a story. A gentleman was driving through the countryside on his way to Cincinnati, when he came to realize he was lost. He stopped at a farm and asked the farmer, "Could you tell me how to get to Cincinnati?"

The farmer thought a while, then said, "Well, keep going down the road. When you come to a crossroad take the left fork. A ways down that road you will see a sign that says to Taylor's Store; don't take that road, but take the next one to the right."

The farmer thought for a moment, then started over. "No, wait a minute. Maybe it would be better if you start out the other way. After you cross the bridge take the road along the river. When you see a big rock in the river there will be a road to the left.... No, that won't work either. You know, Mister, I don't think you can get to Cincinnati from here."

The city slicker responded, a bit peeved, "You mean to tell me you have lived here all your life and you don't know the way to Cincinnati. You must be pretty stupid."

The farmer responded, "Maybe so, but I'm not lost."

That is not the end of the story. This time the city slicker has the last word: "That's only because you don't know how nice it is in Cincinnati. If you knew how much nicer it is in Cincinnati than it is here, then you would be lost, too."

The problem is not that policy makers do not know how to have reduce the number of anti-dumping and countervailing duties, it is that they do not think that things would be better if they did. Brian Hindley and Murray Smith have provided a map to Cincinnati, but the challenge is to persuade policy makers that it is nicer there than it is here. The way the people who make such decisions are in the habit of thinking about them, it seems nicer here.

Let me sum up the points I want to make:

1. The necessary changes are changes of *national* laws and *national* administrative procedures. A GATT Agreement, we must remember, is not enforceable law. It is an Agreement to change national laws and regulations by whatever national procedures national laws and regulations are made and changed.

2. The objective is not *better* anti-dumping actions, *better* countervailing actions and *better* subsidies. It is *less* of each.

3. One way to have less of something is to assign those who have to pay for it a larger role in deciding whether or not to have it.

Present national procedures give voice to the interests that will benefit from restrictive actions and give those benefits legal standing. The same voice should be given to the interests that will bear the costs—and the same legal standing to those costs. I have suggested elsewhere how this might be done and will not repeat those suggestions here.[1]

Finally, a response to those who argue that it is politically naive to suggest that the gains from trade be built into national trade policies. The alternative to national laws that generate fewer anti-dumping and countervailing actions is an international agreement with the *authority* to nullify some of them. To suggest that nations agree to the creation of such a super-national authority is, I contend, even more naive.

Notes

1. Finger, J.M., "Incorporating the Gains from the Trade into Policy", *The World Economy* 5/4 (December 1982); and "Antidumping and Antisubsidy Measures", in *The Uruguay Round—A Handbook for the Multilateral Trade Negotiations*, ed. by Finger and Olechowski (Washington, D.C.: World Bank, November 1987).

Comments on Negotiating Trade Laws

Janet Nuzum
Ways & Means Committee

I will focus my comments directly on the two papers, beginning with Murray Smith's paper. Murray's paper contains an excellent discussion of the historical development of the trade remedy laws and the various rationales for those laws. The discussion aptly addresses both the theoretical underpinnings as well as the political factors that do exist in the real world, and do in fact influence the shape of those laws.

One aspect that is missing, in my view, is any explanation of the reasons why voluntary export restraints (VERs) are bad. Perhaps that is self evident to many people who are in this room. However, Murray's suggestion that improved international rules on subsidies, dumping, and safeguards would lead to less reliance on VERs seems to be based on a premise that VERs are worse than countervailing duty or anti-dumping action. A number of the criticisms of VERs, however, may apply as well to anti-dumping and countervailing duty actions. Therefore, I think it is important for us to examine the disadvantages of VERs, and then keep them in mind as we consider changes in other trade rules. For example, are VERs bad because they are bilateral or applied in a discriminatory manner? Well, that is also true of anti-dumping and countervailing duty actions. Are VERs bad simply because they are outside of the GATT rules? In thinking about that question, it is also important to ask why it is that governments which strongly support the GATT resort to extra-GATT measures such as voluntary export restraints. I would suggest that perhaps the answer is that voluntary export restraints are "free"; the use is not subject to any obligation with respect to compensation and avoids retaliation on the part of the exporting country. The exporting country receives some certainty with respect to market access, and retains the economic rents from any quantitative restrictions. In that sense both sides to the voluntary export restraints have something to gain. The danger is that, for these same reasons, it is not only easier to establish a VER,

but it also becomes more difficult to get rid of it. I would point to the never-ending "temporary" regime of the MFA in the textile area as one example of this risk.

I believe that we must closely examine how we can eliminate these incentives for GATT-supporting countries to embrace any type of VER regime. One opportunity may be through the safeguards negotiations of the Uruguay Round. Murray touched upon that subject but did not elaborate enough, in my view, on the inter-relationship between the safeguards negotiations, the subsidies group negotiations as well as the negotiations that involve dumping issues. There is a strong need to reform the rules and disciplines in all of those areas in light of the historic tendency to resort to VERs in lieu of safeguards measures under Article XIX of the GATT as well as in lieu of anti-dumping and countervailing duty actions.

Murray makes a statement which I have heard often as I travel and talk to people about the U.S. negotiating goals in the Uruguay Round. That statement is that neither the United States nor the European Community seem inclined to negotiate tighter limits on the use of their anti-dumping and countervailing laws during the Uruguay Round. I would respond by saying that that statement is not inaccurate but it is incomplete. From the perspective of the Congress, which is responsible ultimately for making any changes to the U.S. laws on anti-dumping and countervailing duties, there may be a willingness to negotiate certain changes in our anti-dumping and countervailing duty laws but only if, and not before, there are assurances of stronger rules and disciplines on the underlying unfair trade practices themselves, that is the dumping and the subsidy behaviour. There is a strong view in Congress that we should not make any concessions in essence to weaken the medicine if we do not first have an assurance that the underlying cause of the disease is being eliminated. So I would suggest that, despite our initial posture of unwillingness to liberalize or reform U.S. countervailing duty procedures, that posture may change depending on what progress we get on the rules and disciplines on subsidies.

Murray makes a very important statement in his paper that "elimination of trade barriers alters significantly the rationale for some existing import relief laws". I think that statement is really key to the outcome of the debate on trade law reform. This very point underscores the importance of understanding and appreciating the inter-relationships among the various negotiating groups in the Uruguay Round. Improvements on market access; improvements on subsidy rules; improvements on investment rules all contribute to a more open and liberal world trading regime. Once trade barriers have come down and market access is assured, there will be less of a justification for, and hence more of a willingness to reform, the remedial procedures such as the anti-dumping and countervailing duty laws.

One other important point that Murray makes in his paper is the fact that there has been increasing globalization of economic activity which is making the domestic anti-dumping and countervailing duty laws in their current form more arcane. I believe Murray described them as Byzantine and perverse. I think that this is an important point that will become an even bigger problem as time goes on. There are some people on Capitol Hill who are sensitive to this growing concern. It causes, in particular, problems in areas such as the definition of "like product" and the definition of "domestic industry". Some of these issues we grappled with in the Congress during the debate on the 1988

Omnibus Trade Act. Many of these types of issues, however, we did not resolve. I think this is one area of trade law that will only grow in complexity and will need to be very, very carefully thought out and addressed in the future.

Brian Hindley spent a lot of time both in his paper and in his remarks today discussing the rules in anti-dumping law that affect the calculation of dumping margins. I would note that, with respect to the ESP issue, Senator Hollings took a liking to the European Communities' practice and tried during the consideration of the 1988 Omnibus Trade Act to incorporate it into U.S. law. He did not succeed, however. I will refrain from revisiting that particular issue and address my comments to some of the more fundamental points that Brian has made.

I differ with a number of Brian's assertions and conclusions. In particular, I strongly disagree with his claim that the GATT authorization of anti-dumping action poses a threat to the world trading system. I do not believe that the authorization of the anti-dumping action itself is what poses a threat. It is only the unbridled licence or undisciplined action by governments that would pose such a threat; in other words, abuse. Abuse of any authority is bad, but that doesn't mean that the authority is bad, it's the abuse that is bad. As the saying goes, don't throw out the baby with the bath water. Brian suggests that there should be no such thing as an anti-dumping action, but he does not in any way convince me that the underlying basis for the anti-dumping action—that is, dumping—is acceptable. The anti-dumping law exists because of a general consensus that dumping practices confer unfair advantages and therefore justify counter action by importing countries.

One point that both Murray and Brian make is that a terrible shortcoming of the administration of these trade remedy laws is the increase in use of voluntary export restraints. I agree. It is rather ironic that most parties believe that tariffs are more efficient than quantitative restrictions (QRs), yet in practice what we have seen is an increasing propensity to use QRs. The anti-dumping and countervailing duty laws, if they are enforced as they are written and intended, would result in the imposition of a tariff. Yet often the imposition of duties is replaced by voluntary restraints which have the more distorting economic effects that all QRs tend to have. Brian at one point seems to suggest that voluntary export restraints may be better than GATT-sanctioned action, such as anti-dumping action, but he immediately follows that statement with the statement: "the important implication is that policy should focus not on an attempt to ban VERs (were that feasible) but on reform of the alternative GATT measures". I tend to agree with the latter statement and would simply repeat my earlier point that we need to be focusing our efforts in the Uruguay Round on strengthening the rules and disciplines on the underlying trade distorting practices themselves.

Brian suggests four specific reforms to the GATT rules for anti-dumping action. The first reform is to expressly establish that the purpose of anti-dumping action is corrective not punitive. The difficulty that I have with that statement is that under both the current system as well as Brian's reformed system, there is no incentive not do dump. Essentially it pays to dump until you get caught, and once you get caught you only change your future behaviour to do what you otherwise should be doing in the first place. There is no real incentive under the anti-dumping laws that prevents the dumping practice from ever

occurring. This shortcoming is of great concern to the Congress, and is something that we have been grappling with for a number of years. A number of legislative proposals have been introduced in Congress to focus on the deterrent aspect of preventing dumping. Some of the proposals have been rather Draconian, involving for example, recourse through private cause of action and civil damages. Most of them have been dropped from final congressional approval because of their inconsistency with the current GATT rules, but there is increasing concern within the Congress that, any reforms we negotiate with respect to the anti-dumping laws, should have a stronger deterrence element.

His second suggestion is that the GATT detail the means and methods of calculating dumping margins. I am not sure that I would agree. I am not sure that greater detail really improves the situation. The U.S. anti-dumping law has tended, over the years, to get more detailed and more specific with respect to the measurement of dumping margins. However, greater detail has not decreased the number of complaints about the law. The more specific the law is, and the rules and the methods for administering the law, the more criticisms there are of either the strict application of the law, or of circumvention of the law. Moreover, business practices in different countries differ and having very specific methodologies and rules for calculating dumping margins in the GATT may not be very effective due to these differences. For example, in discussing the ESP issue one distinction between the EC law and the United States law relates to the treatment of indirect *vs.* direct selling expenses. Beyond that issue, however, is the further complicating fact that the types of expenses that the EC considers to be indirect selling expenses are very different from the types of expenses that are considered in the U.S. to be indirect selling expenses. It seems that even though we can get very specific saying a direct expense is deducted and an indirect expense is not, there is always another layer of intricacy that will often result in some differences in the various national systems.

His third suggestion is that there be a fast-track dispute settlement procedure. I am not really sure I know what that suggestion means. I would agree that we should have an effective dispute settlement procedure; I am not sure I know what "fast- track" means. If he is referring to the type of dispute settlement procedure in the U.S.-Canadian FTA, then I would say that at least the sense of the Congress is not to extend that example beyond the current U.S.-Canadian agreement. The U.S.-Canada dispute settlement procedure was a somewhat controversial proposal and even its Congressional supporters believe that we should allow some time to gain experience under it. There is not a lot of support to rush to incorporate it into other bilateral frameworks or multilateral frameworks until we have acquired some experience under it and have some basis for judging whether it is a significant improvement or not.

Brian's fourth suggestion is to tighten and sharpen the injury test. Without going into a long debate over the appropriateness of an injury test at all, I would have to say, from the perspective of Congress, that perhaps in the anti-dumping area, there might be some support for that. However, in the countervail area, I would say certainly not; in fact there is considerable sentiment in the opposite direction in the countervail area. There are a number of members of Congress who feel that the United States gave away too much in the Tokyo Round by agreeing to imposing an injury test. A number of congressmen

believe that if a subsidy is found it should be countervailable, with or without a finding of injury.

In conclusion, I would agree with both Brian and Murray that there may be *some* inequities in the current system. From where I sit in Washington, there is a genuine concern that the U.S. allow greater market access and freer channels of trade if and only if competition is based on merit and efficiency, not on any unfair advantages. The Uruguay Round provides an excellent opportunity for further reducing distortions in world trade, but we will need to see substantial improvements in the rules and disciplines on the barriers and trade-distorting practices, not just on the remedial procedures for addressing these practices. Also, we need improved rules and disciplines not just in the subsidy and dumping areas, but more broadly in any area that relates to market access, including government procurement and investment as well. I agree whole-heartedly with Murray, that if we have a multilateral system where there are open markets and no or minimal government intervention in trade, then there is much less of a justification for complicated import relief procedures such as the anti-dumping law which do present opportunities for abuse, but do not, in and of themselves, guarantee abuse.

Annex I

Subsidies and Countervailing Measures: Proposal by Canada (June 1989)

Introduction

The Framework for Negotiations approved by the TNC calls for the conduct of negotiations on subsidies and countervailing measures to be guided along the lines of:

- prohibited subsidies
- countervailable/actionable subsidies
- non-countervailable, non-actionable subsidies
- special and differential treatment for developing countries notification and surveillance
- dispute settlement

The Negotiating Group should work toward an agreement that is balanced as between the major components.

We recognize that this submission may cover some elements which are also under discussion in the Negotiating Group on Agriculture but it does not prejudge their contents nor the primary locus of the detailed negotiations.

This submission is not intended to prejudge the form of an eventual agreement. Reference is made to existing rules and to work done under Committee auspices for the purpose of providing a basic reference point for improvements.

Section 1: Prohibited subsidies

Some subsidies have long been recognized as particularly harmful to an open international trade system. The rules and disciplines of the GATT and the Code reflect international consensus that certain of these subsidies ought to be prohibited. Current negotiations should aim at improving, extending and further refining GATT rules and obligations including enforcement with respect to prohibited subsidies.

(a) Export subsidies

The prohibition on export subsidies in the GATT and Article 9 of the Subsidies Code could be strengthened through certain changes.

Extension to all primary products

The prohibition on export subsidies on products other than certain primary products should be extended to include primary agricultural, fish and forest products in their natural forms or which have undergone such processing as is customarily required for international trade. In effect, the artificial distinction between primary and non-primary products in the Code should be discontinued.

Clarification to Illustrative List of Export Subsidies

For example:

Export incentive effects through indirect tax rebate or import charge drawback systems can also constitute export subsidies. The Committee has already adopted guidelines, prepared by the Group of Experts on the Calculation of the Amount of a Subsidy, relating to substitution drawback systems. The List should therefore be amended to provide greater clarity in the operation of this provision (items (h) and (i)).

Export credit guarantee and insurance programmes that do not cover their long-term operating costs clearly constitute a subsidy on exports. The requirement for cost recovery should be strengthened, and there should be agreement on the time-period over which to assess long-term operating costs (item (j)).

Conversion to a definitive list

In order to facilitate the enforcement of obligations, and to reflect the substantial measure of agreement on the functioning of the Illustrative List to date, signatories should agree on the definitive nature of the List. The existing List, with the modifications and additions suggested above, should be entitled simply "List of Prohibited Export Subsidies". In effect, through the amendments suggested here, we will have achieved a more operationally effective definition of export subsidies. A violation of the List would then clearly constitute a *prima facie* case of nullification and impairment and give rise to specific rights outlined below in the section on remedies.

(b) **Other trade-related subsidies**

Subsidies that are contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or upon export performance clearly constitute trade-distorting subsidies. Experience with existing GATT obligations and precedents suggests that these practices should be made subject to an explicit GATT prohibition.

(c) **Domestic subsidies**

Current rules, while recognizing the legitimacy of various domestic subsidies, also recognize that these subsidies can have adverse effects on the interests of other countries. The only effective discipline on the possible effects of domestic subsidies on exports is presently through the exercise of countervailing measures, which cannot address import displacement and effects in third country markets.

As a complement to the prohibitions on export subsidies and other trade-related subsidies, the Negotiating Group should aim to strengthen and give greater substance to disciplines on domestic subsidies. This could be achieved in a number of different ways. Participants could explore disciplines on domestic subsidies in terms of overall subsidization, or normative rules on specific types of subsidies, or through multilateral sectoral undertakings.

(d) **Remedies—prohibited subsidies**

The appropriate remedy for any violation of a prohibition should be recourse to GATT dispute settlement procedures and multilaterally sanctioned remedies.

Procedures should be established to provide for requests from signatories for multilateral rulings on whether another signatory is using a prohibited subsidy. If there is an affirmative ruling, the offending country should withdraw, amend or otherwise being the measure into conformity with the rules as soon as possible in order to reduce to a minimum any adverse effects. The offending country could also be required to provide compensation for any adverse effects resulting from subsidies which are found to be in violation of the prohibition obligation but which have already been delivered. In the event that withdrawal or amendment does not occur within a reasonable time, there would be provision for the affected country to take effective countermeasures against a prohibited subsidy.

Countries should be able to make references to a multilateral body for an advisory opinion on whether a proposed programme would be considered a prohibited subsidy before the programme is finalized and implemented.

The nature of the remedy available should be restricted to the imposition of increased duties, equivalent to countervailing duties, applied against exports from the subsidizing country. In the case of a prohibited subsidy with adverse effects in

the importing country, the duties would be applied to the subsidized imports, while in cases of adverse effects in third country markets or in the home market of the subsidizing country, the duties would be applicable against other goods exported by the subsidizing country to the complaining country (or countries).

Section 2: Countervailable or otherwise actionable subsidies

There is a lack of precision in the General Agreement and the Code on what subsidy practices should be subject to countermeasures. This has led to uncertainty regarding the potential for countervail and opened the door to possible protectionist effects, including procedural harassment of legitimate exports. Strengthened multilateral rules on the use of countervail would enhance the stability and predictability of international trading conditions.

(a) Conditions for countervailability

The concept of specificity should be enshrined as a condition for countervailability. Guidelines for the application of this concept have been pursued in the Committee and could involve:

- the existence of restrictions or exclusions placed by the granting authority which have the effect of limiting access to a subsidy to a particular enterprise or industry, or a group of enterprises or industries, within the jurisdiction of the granting authority; or
- the absence of neutral eligibility criteria, clearly spelled out in law or regulation and capable of verification, on the basis of which assistance is made available.

Predictability could also be enhanced by agreement on the treatment of particular types of subsidies for the purposes of determining countervailability. For example:

- government provision of equity capital should not be considered a subsidy if shares are purchased at market prices, or, where there is not market price for the shares, if a reasonable evaluation made at the time of the investment decision concluded that the equity would achieve an adequate return.
- the amount of subsidy implicit in a government loan, loan guarantee or loan insurance programme should be measured as the difference between the interest rate charged under the programme and the comparable interest rate that a private sector lender would charge for the same loan in the absence of the programme. In no case should the amount of the subsidy measured exceed the principal amount of the loan made under the programme.

- where a comparable private sector interest rate can be ascertained, the amount of the subsidy may be measured as the difference between the government's borrowing rate and the rate charged on loans made under the programme.

GATT practice and discipline on subsidies reflect a general view that subsidies exist where the price mechanism is affected by the exercise of government authority to impose tax and to expend revenue, whether directly or through delegation of authority. Current rules apply to practices which involve a direct transfer of funds, potential direct transfers or liabilities, and foregone revenue.

Accordingly, building upon current rules, a basic condition for countervailability of a given measure should be the existence of a financial contribution by government. This condition would be consistent with the objective of offsetting the effects of interference with the operation of the price mechanism.

The conditions under which *input subsidies* are potentially countervailable are not spelled out under existing rules. It should be made clear that indirect subsidies would be countervailable only to the extent that they meet the following sequence of three tests:

(i) whether there is a pass-through of a subsidy on a input i.e. the input purchase price is less than the prevailing domestic market price or the price the purchaser would otherwise pay for imported inputs;

(ii) whether such pass-through is specific in nature; and

(iii) whether the input subsidy itself is specific.

Methods of calculation of subsidies for the purpose of countervail could be clarified, building upon earlier work by the Group of Experts, as follows:

amortization and depreciation procedures should be followed to allocate the amount of a subsidy over time (a) in the case of a subsidized loan, loan guarantee or loan insurance, over the life of the loan itself, or, (b) where a grant or a loan, loan guarantee or loan insurance, is used for the acquisition of physical assets, over the average useful life of the assets so acquired.

(b) Trade effects—tests for actionable subsidies

(i) *In the market of the importing country*

The determination of the injurious effect of actionable subsidies is a matter of considerable uncertainty under existing rules, particularly Article 6 of the Code. Greater certainty could be provided by a requirement that the following principal factors be present in order to demonstrate that increased subsidized imports are causing or threatening to cause *material injury* or retardation: either price suppression or lost sales; and reduced profits. In addition, investigating authorities should take into account the margin of subsidization in determining the existence of injury.

A *de minimis* standard should be applied to preclude the application of countervailing duties in cases where the amount of the subsidy is less than x per cent of the unit value of the imported goods.

The *cumulation* of different sources of imports in countervailing duty investigations can lead to the inclusion of countries whose exports contribute to neither injury nor the threat of injury. The capacity to exclude such countries from the scope of a countervailing duty investigation should be strengthened. Accordingly, a permissive clause could be created which would require that cumulation not be mandatory, and that a country may be excluded from the scope of an investigation at any stage, in any case in which imports of the like products from that country are negligible and have no discernible adverse impact on the domestic industry.

Where the domestic industry in a countervailing duty investigation is itself receiving government subsidies, the effect of imposing a countervailing duty on subsidized imports may be inequitable and may increase the degree of trade distortion. This is all the more probable where there is a high degree of openness and economic integration between the importing and exporting countries. In order to establish greater symmetry of discipline, the determination of the *amount of the subsidy should be based on the difference between the subsidy on imports and the subsidy on domestic production of the like products*.

The domestic industry, in making a petition for initiation of a countervailing duty investigation, should be required to state the amount of any subsidies it has received or is receiving. The exporting country would also have the right to bring forth verifiable evidence of subsidization of producers of the like products in the importing country. The investigating authorities would be required to subtract any subsidies received by the domestic industry before deciding on whether or not to levy a countervailing duty and no countervailing duty should be levied in excess of the difference between the subsidy on imports and the subsidy on domestic production of the like products.

(ii) *In the market of the subsidizing country or in third country markets*

The purpose of countervailing duties is to remedy injurious trade distortions. However, present rules do not adequately address trade distortions that may occur as a result of subsidies that displace imports in the home market of the subsidizing country or in third country markets. Discipline could be exercised on subsidies affecting the home market through a special nullification and impairment mechanism. For example:

- any actionable subsidy in excess of a certain maximum level of subsidization could be deemed to constitute a *prima facie* case of nullification and impairment, unless the subsidizing country could demonstrate otherwise to a multilateral panel. This level would realistically need to be established through negotiation.
- any signatory that has a substantial interest would be able to invoke this mechanism. A multilateral panel would be required to determine

whether the maximum level had been exceeded, and, in the event the offending subsidy is not withdrawn or modified, on the amount of appropriate compensation/ retaliation.

- subsidization below the maximum level would not constitute *prima facie* nullification and impairment but would continue to be subject to the normal discipline (i.e. the affected country would continue to have the right to bring forward evidence to demonstrate actual nullification and impairment).

(c) Remedies—countervailing duties

For the purpose of clarifying the scope and transparency of investigation procedures regarding countervailing duties against actionable subsidies, a number of technical but important issues should be addressed. These should include the definition of industry, the standing of petitioners, a sunset clause, and the use of undertakings.

The definition of industry under current rules has resulted in situations where the market structure of particular industries, and the particular nature of trade in the agricultural sector, could preclude the application of countervailing duties even where subsidized imports are shown to be directly causing injury. Accordingly, special provision could be made for clarifying the term "domestic industry" in instances where, by virtue of the particular market structure of an industry based on agricultural inputs, injury caused or threatened by imports or partly or minimally processed agricultural products can be transmitted to producers who have a coincidence of interests in respect of imports of those products and are situation along the same chain of production.

The requirement that the domestic industry in an injury examination constitute a major proportion of the domestic production of like products should be strengthened. The investigating authorities should be required to verify the standing of petitioners, i.e. that they satisfy the major proportion requirement, before initiating investigations. In addition, the requirement could be defined with greater precision, for example, in terms of x per cent of total domestic production.

Countervailing duties are subject to a sunset clause under the laws of an increasing number of countries, reflecting the fact that the circumstances of injury caused or threatened by subsidized imports can change over time. The principle of time-limits on their application could be more firmly established by requiring that countervailing duty findings lapse automatically unless a review is conducted within five years, in which case findings would be renewable for a maximum of an additional three years.

In cases where a company whose exports are the subject of a countervail investigation benefits from subsidy programmes to a much greater extent than other companies exporting the same goods, it may be inequitable to calculate a "residual" margin of subsidization for application to new exporters at the rate of the

more heavily subsidized company. To the extent feasible, therefore, in cases where companies exporting the goods that are the subject of a countervail investigation receive widely different degrees of subsidization, company-specific findings could be required for any new exporters of the subject goods.

Current rules provide for the use of undertakings as a method of dealing with injurious subsidized imports before the imposition of countervailing duties. It is important to ensure, however, that these provisions do not allow selective trade actions to be taken against non-injurious or unsubsidized imports. The provisions governing undertakings could be strengthened by:

- expanding notification requirements to include details of the undertaking itself;
- subjecting undertakings to review and to a sunset clause; and
- clarifying that, in the event that one of the parties to an undertaking requests that an injury investigation be continued and a finding of injury results, the undertaking shall continue in force.

The investigating authorities should also provide, for a reasonable period of time of at least thirty days duration following initiation of any investigation, an opportunity for exporters and importers to respond to allegations by the petitioner and otherwise to provide relevant information. The investigating authorities should also ensure that such responses and information are taken fully into account, such that a preliminary determination of subsidization should not normally be made sooner than sixty days following initiation, unless the product involved has previously been investigated.

The imposition of countervailing duties can have effects that spread well beyond the domestic producers of the like products. Burdens can be imposed on related industries, on consumers and on the domestic economy as a whole. Accordingly, it would be appropriate for countries to provide procedures for formal consideration of whether the imposition of countervailing duties is in the public interest.

Section 3: Non-actionable, non-countervailable subsidies

Current rules do not provide sufficient guidance nor an adequate means of resolving conflicts over which practices are non-distorting. The specification of a category of non-actionable subsidies would contribute greater certainty and predictability to international trade relations.

(a) Conditions for non-countervailability/non-actionability

The most basic condition under which subsidies should be free of any threat of action is general availability. Programmes that are available to the general population,

for example, for social assistance, public welfare, education, environmental management and conservation, national identity and natural disaster relief, do not distort trade. The concept of general availability could be operationalized by a requirement that no programme that provides grants, forgiveness of debts, loans, loan guarantees or loan insurance, privileged tax treatment or other benefits with equivalent effect should be countervailed if its benefits are, according to eligibility criteria set out explicitly in laws or regulations, generally obtainable by all industries engaged in:

(a) manufacturing; or

(b) primary agriculture; or

(c) resource extracting/harvesting, including primary processing.

Moreover, the following categories of programmes should be deemed not to be countervailable or actionable:

- regional development assistance generally available to enterprises or industries within designated geographic areas, determined on the basis of neutral and objective criteria using verifiable statistical data;
- assistance to furnish or support basic infrastructure for general public use;
- adjustment assistance provided to workers; and
- assistance to research and development.

(b) Special safeguard procedure—non-actionable subsidies

Situations may arise in which a signatory feels it has been adversely affected by the use of a non-actionable subsidy by another signatory. the need for a *special safeguard provision* to deal with such situations will depend on the nature of the rules agreed to in the area of non-actionable subsidies.

If a country were of the view that a non-actionable subsidy has been included in the preliminary determination of subsidization, it could refer the matter to a multilateral panel. The panel would be required to issue a report on whether the subsidy in question falls within the non-actionable category prior to the final determination of subsidization by the investigating authority. In the event of an affirmative report by the panel, the importing country would be required to exclude that subsidy from its final determination.

A procedure should also be available to signatories to determine whether a particular practice meets the conditions for non-countervailability/non-actionability. A multilateral panel process would be convened at the request of signatory. Countries considering the introduction of particular programmes should be able to make *ex ante* references to that multilateral panel for an advisory opinion on whether a proposed programme would be considered a non-actionable subsidy before the programme is finalized and implemented.

Section 4: Special and differential treatment for developing countries

The Punta del Este Declaration recognizes that the participation of the developing countries in these negotiations is based on consistency with their individual development, financial and trade needs. The procedures and clarifications to current rules suggested within this submission contain elements of particular interest to developing countries:

- greater clarify and precision as to which subsidies are prohibited, actionable or non-actionable;
- improved multilateral procedures, including *ex ante* rulings, regarding the actionability of particular subsidy practices;
- the establishment of an agreed *de minimis* level of subsidization below which countervailing duties would not be imposed;
- provision for excluding countries whose exports do not contribute to injury from cumulative injury findings;
- greater certainty in the application of countervailing duties through improved definitions of key concepts such as injury and standards for the identification and calculation of subsidies for the purpose of countervail investigations.

The need for particular provisions with regard to developing countries will depend on the nature of the rules and disciplines which have yet to be developed. We would be prepared to examine proposals that participants wish to present.

Section 5: Notifications and surveillance

Transparency through notifications and surveillance is a key requirement for effective multilateral disciplines on subsidies and countervailing duties. The proposals here for clarification and increased precision as to which subsidy practices are prohibited, actionable and non-actionable would reduce uncertainty regarding what practices are required to be notified. This should reinforce current obligations with respect to notification of subsidies.

As to the need to improve current provisions relating to notification and surveillance, the nature of those improvements will not become clear until there is a clearer sense of what substantive rules are agreed to by the participants. We would also be prepared to examine any proposals in this area.

Section 6: Dispute settlement

Experience with the dispute settlement provisions in the Code has demonstrated that a large number of disputes have not proven susceptible to resolution through the existing process. This is due in large part to the absence of clarity in the obligations and rights associated with the existing rules. Revisions along the lines suggested within this submission should significantly improve the rules and consequently lead to a more effective dispute settlement process.

Several particular provisions regarding dispute settlement have been suggested in this submission under the various headings of the negotiating framework:

- it would be clear that a violation of the "List of Prohibited Subsidy Practices" would constitute a *prima facie* case of nullification and impairment;
- procedures would be available for signatories to request rulings on whether other signatories were using prohibited practices;
- a procedure would be established for countries to make *ex ante* references to multilateral panels for rulings on whether subsidy programmes they propose to implement are prohibited, actionable or non-actionable;
- a special nullification and impairment mechanism would be created whereby any actionable subsidy in excess of a certain maximum level of subsidization would constitute a *prima facie* case of nullification and impairment;
- a special safeguard procedure would be established to provide recourse to a multilateral panel for a ruling on whether a subsidy that has been included in a countervail investigation is a non-actionable subsidy.

The problems with dispute settlement under the Code, as with dispute settlement generally in the GATT, have manifested themselves in terms of the adoption and implementation of panel reports. Both this Group and the Negotiating Group on Dispute Settlement should address possible improvements to these elements of the dispute settlement process and the relationship of the special multilateral procedures suggested in this submission to the regular dispute settlement mechanism.

List of Participants

1. Conference on Canada, the Pacific and the Uruguay Round
June 28-29, 1989, Vancouver

Name	Title & Organization	Location
Brian Anderson	Acting Director Policy, Planning Corporate Services Dept. of Industry Science & Technology Government of Canada	Vancouver, B.C.
Michael Apsey	President Council of Forest Industries	Vancouver, B.C.
John Baldwin	Vice-President The Progress Group	Vancouver, B.C.
Phil Barter	Senior Partner Price Waterhouse	Vancouver, B.C.
David Beardsell	Economic Counsellor Ministry of International Affairs Government of Quebec	Québec, Qué.
Bartaud Belziel	Economist Ministry of Agriculture Government of Quebec	Québec, Qué.

Name	Title & Organization	Location
Firman Bentley	President Polysar Ltd.	Sarnia, Ont.
André Binette	Counsellor Secretariat of Canadian Intergovernmental Affairs Government of Quebec	Québec, Qué.
His Excellency Bruce Brown	High Commissioner for New Zealand	Ottawa, Ont.
Douglas Brown	Associate Director Institute for Intergovernmental Relations Queens University	Kingston, Ont.
Bob Calis	Comissioner Fraser River Harbour Commission	New Westminster, B.C.
Charles Carlisle	Deputy Director-General GATT Secretariat	Geneva, Switzerland
Tony Carlson	Senior Writer Northern Telecom Canada	Mississauga, Ont.
Honourable Pat Carney	(Former Minister of International Trade) Faculty of Commerce University of British Columbia	Vancouver, B.C.
Mike Carter	Director, Trade Negotiations and International Economic Policy Ministry of International Business and Immigration Government of British Columbia	Victoria, B.C.
Julie Citroen	Research Analyst The Manufacturer's Life Ins. Co.	Toronto, Ont.
David Conklin	National Centre for Management Resource Development University of Western Ontario	London, Ont.
Kim Cook	Lawyer Russell & DuMoulin	Vancouver, B.C.
Honourable John Crosbie	Minister for International Trade Government of Canada	Ottawa, Ontario
Stuart Culbertson	Executive Director Ministry of International Business and Immigration Government of British Columbia	Victoria, B.C.

Name	Title & Organization	Location
John Curtis	Senior Policy Advisor Office for Multilateral Trade Negotiations	Ottawa, Ont.
Alan Darisse	Deputy Director Trade Communications Department of External Affairs	Ottawa, Ont.
Stephen Deady	Commercial Counsellor Australian High Commission	Ottawa, Ont.
Germain Denis	Assistant Deputy Minister Office for Multilateral Trade Negotiations Government of Canada	Ottawa, Ont.
Martine Desbois	Investment Branch Ministry of International Business and Immigration Government of British Columbia	Victoria, B.C.
Bruce Dunsten	B.C. Hydro	Vancouver, B.C.
Rod Dobell	President Institute for Research on Public Policy	Victoria, B.C.
H.E. (Ted) English	Co-ordinator Pacific Trade Policy Forum	Ottawa, Ont.
Daniel Fallon	Manager, Economic & Trade Analysis Government of Newfoundland	St. John's, Nfld.
Geza Feketukuty	Counsellor Office of the United States Trade Representative	Washington, D.C.
Christopher Findlay	Senior Lecturer Department of Economics University of Adelaide	Adelaide, South Australia
Michael Finger	Principal Economist World Bank	Washington, D.C.
Alan Fitzgibbons	Consultant DPA Consultants	Vancouver, B.C.
Terry Ford	Director, Bilateral Trade Policy Industry, Science & Technology Government of Canada	Ottawa, Ont.
Bob Fox	Senior Director Government of Alberta	Edmonton, Alberta

Name	Title & Organization	Location
Robert Fraser	Analyst Business Corporation Branch CIDA, Government of Canada	Hull, Que.
David Gamble	Assistant Secretary Economic and Trade Relations Government of New Zealand	Wellington, New Zealand
François Gauthier	Assistant Coordinator Office for Multilateral Trade Negotiations	Ottawa, Ont.
Heather Gibb	Director, Pacific The Canadian Chamber of Commerce	Ottawa, Ont.
Klaus Goeckmann	Vice-President Marketing Cominco Ltd.	Vancouver, B.C.
Paul Haddow	Assistant Deputy Minister Saskatchewan Trade and Investment Government of Saskatchewan	Regina, Sask.
Brian Hindley	Counsellor for Studies London School of Economics and Trade Policy Research Centre	London, England
Sir Frank Holmes	Institute for Policy Studies University of Wellington	New Zealand
David Iwassa	Assistant Director International Economic Relations Department of Finance Government of Canada	Ottawa, Ont.
Honourable John Jansen	Minister of International Business and Immigration Government of British Columbia	Victoria, B.C.
Emam Khan	Policy Adviser Fraser River Harbour Commission	New Westminster, B.C.
Jamie Kidston	President B.C. Tree Fruits Limited	Kelowna, B.C.
John Klassen	Office of the Mission of Canada Hong Kong	Hong Kong
Scott Lawrie	Manager, Project Development, Asia Novacor Chemicals Ltd.	Calgary, Alberta
David Lee	Senior Co-ordinator - New Issues Office for Multilateral Trade Negotiations	Ottawa, Ont.

Name	Title & Organization	Location
Bob Lorenzin	Regional Manager, Trade Finance Bank of Montreal	Vancouver, B.C.
Janet Lucas	International Policy Analyst Ministry of International Business and Immigration Government of British Columbia	Victoria, B.C.
Helmut Mach	Director International Economic Relations Government of Alberta	Edmonton, Alberta
James Matkin	President Business Council of British Columbia	Vancouver, B.C.
Tim Miller	Trade Policy Analyst International Trade Policy Directorate Agriculture Canada	Ottawa, Ont.
Bill Miner	Senior Research Associate: Agriculture Institute for Research on Public Policy	Ottawa, Ont.
Patrick Moran	Senior Advisor Secretariat of Canadian Intergovernmental Affairs Government of Quebec	Québec, Qué.
Janet Nuzum	Professional Staff Member Sub-Committee on Trade Ways & Means Committee	Washington, D.C.
Wilhelm Ortaliz	Philippines Council on Foreign Relations	Philippines
Richard Pearce	Port Manager & C.E.O. Fraser River Harbour Commission	Westminster, B.C.
Robert Perron	Director, Trade Policy Branch Saskatchewan Trade & Development Government of Saskatchewan	Regina. Sask.
John Pyrik	Corporate Communications Chevy Development Corporation	Vancouver, B.C.
Darcy Rezach	Managing Director Board of Trade	Vancouver, B.C.
Anne Ritchie	Co-ordinator Ministry of Intergovernmental Affairs Government of Ontario	Toronto, Ont.

Name	Title & Organization	Location
Frank Robertson	President & C.E.O. Woodward's Ltd.	Vancouver, B.C.
Nicolas Rouse	Vice President Alcan Pacific	Vancouver, B.C.
Bir Sahni	Member Canadian International Committee of PECC	Montreal, Que.
Ken D. Sarsons	Consultant P.B.E.C.	Peachland, B.C.
Jeffrey Schott	Research Fellow Institute for International Economics	Washington, D.C.
Lorne Seitz	Deputy Minister Ministry of International Business and Immigration Government of British Columbia	Victoria, B.C.
Ken Short	Canadian Institute for International Affairs	Vancouver, B.C.
Murray Smith	Director, International Economics Program Institute for Research on Public Policy	Ottawa, Ont.
Robert Stranks	Senior Economist Bureau of Foreign Intelligence Government of Canada	Ottawa, Ont.
Surinder Suri	Chief Economist London Life Insurance Company	London, Ont.
James Taylor	President Canadian Export Association	Ottawa, Ont.
Gordon Thompson	Manager, Government Relations Cominco Ltd.	Vancouver, B.C.
Jack H. Warren	Principal Trade Policy Advisor Government of Quebec	Ottawa, Ont.
Ann Weston	Director, Trade Program North-South Institute	Ottawa, Ont.
John Wieve	Senior Vice-President Bank of Montreal	Vancouver, B.C.

Name	Title & Organization	Location
Cai Wenguo	Research Visitor Institute for Research on Public Policy	Ottawa, Ont.
Lawrence Woods	Assistant Professor Bishops University	Lennoxville, Qué.
Ippei Yamazawa	Department of Economics Hitotsubashi University	Tokyo, Japan
Soogil Young	Senior Fellow Korea Development Institute	Seoul, Korea
Mark Zacher	Director Institute for International Relations University of British Columbia	Vancouver, B.C.

2. Pacific Economic Cooperation Conference

June 26-28, 1989, Vancouver

AUSTRALIA

Christopher Findlay
Senior Lecturer
Department of Economics
University of Adelaide

Tony Hely
Representative of the National Pacific Cooperation Committee of Australia

Peter Lavery
Lavery International Pty. Ltd.

John McDonnell
International Trade Consultant

CHINA

Chen Jian
Member, China National Committee for Pacific Economic Cooperation

Li Zhongzhou
Representative of the Chinese National Committee for Pacific Economic Cooperation

INDONESIA

Djisman Simandjuntak
Center for Strategic and International Studies

JAPAN

Tadao Hata
Chief Economist
N.Y. Office
Bank of Tokyo

Masaki Ishikawa
Representative of the Japan National Committee for Pacific Economic Cooperation

Nobuyori Kodaira
Staff member
JETRO

Makoto Kuroda
Special Advisor to MITI & Japan Economic Foundation
Advisor to the Long-Term Credit Bank and Japan Ltd. and
Salomon Brothers Asia Ltd.

Kensuki Norichika
Toshiba Corporation

Miyohei Shinohara
Chairman
Institute of Developing Economies

Ambassador Hideyuki Ukawa
Representative of the Japan National
Committee for Pacific Economic Cooperation

Ippei Yamazawa
Professor of Economics
Hitotsubashi University

KOREA

Byong Kyun Kim
Representative of the Korean National Committee
for Pacific Economic Cooperation

Chungsoo Kim
Korea Institute for Economics and Technology

Yong Jun Kim
Representative of the Korean National Committee
for Pacific Economic Cooperation

Soogil Young
Senior Fellow
Korea Development Institute

MALAYSIA

Encik Haron Siraj
Representative of the Malaysian National Committee
for Pacific Economic Cooperation

NEW ZEALAND

Barry Brill
Goodman, Fielder, Wattie

David Gamble
Representative of the New Zealand National Committee
for Pacific Economic Cooperation

Sir Frank Wakefield Holmes
Emeritus Professor, Visiting Fellow
Institute for Policy Studies
Victoria University

THE PHILIPPINES

Wilhelm G. Ortaliz
Vice-Chairman
Philippine Economic Cooperation Committee
Executive Director
Philippine Council for Foreign Relations Inc.

Linda Medalla
Research Fellow
Philippine Institute of Development Studies

SINGAPORE

Hank Lim
Coordinator
Singapore National Committee for Pacific Economic Cooperation
Senior Lecturer, National University of Singapore

Lee Yuan
National University of Singapore

CHINESE TAIPEI

Wang Chang-Ching (Chief Delegate)
Representative of the Chinese Taipei Pacific Economic Cooperation Committee

Pin-Kung Chiang
Representative of the Chinese Taipei Pacific Economic Cooperation Committee

Tsu-dan Wu
Chinese Taipei Pacific Economic Cooperation Committee

Paul S.P. Hsu
Professor of Law
National Taiwan University

Tai-Ying Liu
Director-General
Chinese Taipei Pacific Economic Cooperation Committee

Chin-Kun Chang
Associate Research Fellow
Taiwan Institute of Economic Research

Hsin Liu
Senior Assistant
Chinese Taipei Pacific Economic Cooperation Committee

Li-Ping Chou
Junior Assistant Research Fellow
Chinese Taipei Pacific Economic Cooperation Committee

THAILAND

Karun Kittistaporn
Representative of the Thailand National Committee for Pacific Economic Cooperation

UNITED STATES OF AMERICA

Carol Brookins
Consultant

Brewster Denny
United States National Committee for Pacific Economic Cooperation

Geza Feketekuty
Representative of the United States National Committee for Pacific Economic Cooperation

John Hatton
McClellan and Marsh

Jeffrey Schott
Senior Fellow
Institute for International Economics

Michael Smith
Representative of the United States National Committee for Pacific Economic Cooperation

David Tappan
Chairman and Chief Executive Officer
Fluor Corporation

Other Participants and Guests

Miguel Angel Toro
Director General of International Trade Negotiations
Mexico

Charles Carlisle
Deputy Director-General
General Agreement on Tariffs and Trade (GATT)

Michael Finger
Principal Economist for International Trade
World Bank

Peter Lo
Minister
Hong Kong Economic and Trade Affairs
Washington

Jaime Pomareda
Consul of Peru
Vancouver

T. Feodorovitich
Representative of the Union of Soviet Socialist Republics

A. Romanoff
Representative of the Union of Soviet Socialist Republics

CANADA

George Adorjany
Executive Director, Investment Promotion
Ministry of Economic Development and Trade
Alberta

John Baldwin
Vice-President
The Progressive Group

Philip Barter
Senior Partner
Price Waterhouse

Mike Carter
Director of Trade Negotiations and International Economic Policy
Ministry of International Business and Immigration
British Columbia

K. Lorne Brownsey
Research Associate
The Institute for Research on Public Policy

The Honourable Pat Carney
Former Minister for International Trade
Government of Canada

Peter Cornell
University of Ottawa

The Honourable John Crosbie
Minister for International Trade
Government of Canada

Stuart Culbertson
Executive Director
Trade and International Economic Policy
Ministry of International Business and Immigration
British Columbia

John Curtis
Senior Advisor
Office of Multilateral Trade Negotiations

Germain Denis
Assistant Deputy Minister
Office of Multilateral Trade Negotiations

Martine Desbois
Investment Branch
Ministry of International Business and Immigration
British Columbia

Rod Dobell
President
The Institute for Research on Public Policy

H.E. (Ted) English
Coordinator, Trade Policy Forum
Professor of Economics, Carleton University

Oksana Exell
Coordinator for International Competitiveness
Ministry of International Business and Immigration
British Columbia

Terry Ford
Industry, Science and Technology, Canada

Francois Gauthier
Assistant Coordinator for Multilateral Negotiations
Department of External Affairs

Heather Gibb
Secretary, Canadian National Committee on Pacific Economic Cooperation
Director, Pacific, Canadian Chamber of Commerce

Michael Hart
Professor
Carleton University

Ralph Huenemann
Director
Centre for Asia Pacific Initiatives
Professor of Economic Relations with China
University of Victoria

D. Iwaasa
Department of Finance
Canada

John Klassen
Canadian Embassy
Tokyo

Scott Lawrie
Manager - Project Development - Asia
Novacor Chemicals Ltd.

Harvey Lazar
Economic Council of Canada

Janet Lucas
International Policy Analyst
Ministry of International Business and Immigration
British Columbia

Helmut Mach
Executive Director
Federal/Provincial Relations
Alberta

Ronald A. MacIntosh
North East Asia Relations Division
Department of External Affairs

Sunder Magun
Economic Council of Canada

Donald McFetridge
Professor
Department of Economics
Carleton University

Barry Mehr
Assistant Deputy Minister
Ministry of Agriculture
Alberta

Rabin Mendis
Director, Investment Promotion
Ministry of Economic Development and Trade
Alberta

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Canada, the Pacific and Global Trade

edited by Murray G. Smith

Recent proposals for Pacific economic cooperation are perceived by many as leading potentially to the formation of a new trade bloc, perhaps linked in some way to the Canada-U.S. Free Trade Agreement, to counter Europe 1992. Instead, however, the current focus of Pacific economic cooperation is directed toward promoting progress in the Uruguay Round of GATT negotiations. In light of common concerns about unilateral trade actions by the United States and the European Community, strengthening the multilateral trading system is therefore a key priority shared by Canada and other Pacific economies.

This was the main conclusion that emerged from an Institute conference entitled "Canada, the Pacific and the Uruguay Round", which was held in Vancouver June 28-29, 1989 in conjunction with the third trade Policy Forum of the Pacific Economic Cooperation Conference (PECC). Addressing both the Institute conference and the PECC Forum, John Crosbie, Minister of International Trade, stated, "the answer to current trans-Pacific problems lies in multilateral and regional cooperation—not bilateral confrontation" and expressed support for a new pacific ministerial forum along the lines proposed by Prime Minister Hawke of Australia.

A Pacific ministerial meeting hosted by Australia is planned late in 1989. Thus, the analysis of Pacific interests and key issues in the Uruguay Round at the Vancouver meetings will contribute to the development of common Pacific perspectives on outstanding issues at this ministerial meeting and during the critical final stages in the GATT negotiations. The Pacific economies are taking a more active role in shaping the evolution of the global trading system into the 21st Century.

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